Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Court of International Trade

Vol. 15 DECEMBER 16, 1981 No. 50

This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

Treasury Decisions

(T.D. 81-293)

Reimbursable Services—Excess Cost of Preclearance Operations

DEPARTMENT OF THE TREASURY
OFFICE OF THE COMMISSIONER OF CUSTOMS
Washington, D.C., November 25, 1981.

Notice is hereby given that pursuant to Section 24.18(d), Customs Regulations (19 CFR 24.18(d)), the biweekly reimbursable excess costs for each preclearance installation are determined to be as set forth below and will be effective with the pay period beginning December 13, 1981.

Installation:	*Biweekly excess cost*
Montreal, Canada	$16,152
Toronto, Canada	30,393
Kindley Field, Bermuda	5,991
Nassau, Bahama Islands	13,778
Vancouver, Canada	10,511
Winnipeg, Canada	1,676
Freeport, Bahama Islands	11,025
Calgary, Canada	7,863
Edmonton, Canada	3,925

MITCHELL A. LEVINE,
Acting Comptroller.

Published in the Federal Register Dec. 3, 1981 (46 FR 58773)

(T.D. 81-294)

Bonds

Approval and discontinuance of Carrier's Bonds, Customs Form 3587

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D"

indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: November 27, 1981.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
M. Bruenger & Co., Inc., 6250 N. Broadway, Wichita, KS; motor carrier; The North River Ins. Co. D 11/21/81	Nov. 21, 1978	Nov. 22, 1978	St. Louis, MO $50,000
C L & A Motor Delivery, Inc., 4110 Dane Ave., Cincinnati, OH; motor carrier; St. Paul Fire & Marine Ins. Co. D 11/6/81	Apr. 12, 1974	Apr. 22, 1974	Cleveland, OH $50,000
C.O.D.E., Inc., 4800 Colorado Blvd., Denver, CO; motor carrier; Ins. Co. of North America (PB 11/17/80) D 11/17/81 [1]	Nov. 17, 1981	Nov. 17, 1981	El Paso, TX $25,000
Courchesne Larose Ltd., 1455 Rue Bercy, Montreal, Quebec, Canada; motor carrier; The Hanover Ins. Co. D 11/2/81	July 7, 1977	June 24, 1977	Ogdensburg, NY $25,000
Craig Transportation Co., 26699 Eckel Rd., Perrysburg, OH; motor carrier; Ohio Farmers Ins. Co.	Sept. 21, 1981	Oct. 21, 1981	Cleveland, OH $50,000
Crewe Transfer, Inc., Crewe, VA; motor carrier; Ins. Co. of North America (PB 9/24/79) D 11/4/81 [2]	Sept. 24, 1981	Nov. 4, 1981	Norfolk, VA $25,000
C. H. Dredge & Co., Inc., (A UT Corp.) 918 South 2000 West, Syracuse, UT; motor carrier; American Manufacturers Mutual Ins. Co. D 11/1/81	Oct. 30, 1979	Dec. 12, 1979	San Francisco, CA $25,000
Evans Delivery Co., Inc., P.O. Box 268, Pottsville, PA; motor carrier; Ohio Casualty Ins. Co.	July 30, 1981	July 30, 1981	Philadelphia, PA $50,000
Everette Truck Line, Inc., Washington, NC; motor carrier; U.S. Fidelity & Guaranty Co.	Oct. 23, 1981	Nov. 5, 1981	Wilmington, NC $25,000
F-B Truck Line Co., 1945 South Redwood Rd., Salt Lake City, UT; motor carrier: Commercial Union Ins. Co. D 8/17/81	Sept. 3, 1974	Aug. 15, 1975	San Francisco, CA $25,000
Hamilton Trucking Co. of Oklahoma, Inc., 12612 E. Admiral Place, Tulsa, OK; motor carrier; Ins. Co. of North America (PB 10/1/80) D 10/26/81 [3]	Oct. 1, 1981	Oct. 26, 1981	Dallas/Fort Worth, TX $25,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Harbor Transportation Co., Inc., 30 Waterfront St., New Haven, CT; motor carrier; The Travelers Indemnity Co.	Sept. 18, 1981	Nov. 6, 1981	Bridgeport, CT $50,000
Harbor Towing Corp.—(See Interstate & Ocean Transport Co.)			
Hyman Freightways, Inc., 1745 University Ave., St. Paul, MN; motor carrier; Transamerica Ins. Co. (PB 11/10/69) D 11/10/81[4]	Sept. 23, 1981	Nov. 11, 1981	Minneapolis, MN $30,000
Interstate & Ocean Transport Co. and Harbor Towing Corp., an affiliate, 1400 Three Parkway, Phila, PA; water carrier; St. Paul Fire & Marine Ins. Co.	Sept. 28, 1981	Nov. 4, 1981	Philadelphia, PA $50,000
Jet Air Freight & Parcel Delivery, Inc., P.O. Box 9313—Baer Field, Fort Wayne, IN; motor carrier; American States Ins. Co. D 10/26/81	Dec. 31, 1980	Apr. 6, 1981	Chicago, IL $30,000
Kabat Express, Inc., 1944 Scranton Rd., Cleveland, OH; motor carrier; St. Paul Fire & Marine Ins. Co.	Oct. 5, 1981	Nov. 6, 1981	Cleveland, OH $50,000
Mt. Vernon Motor Transportation Co., Inc., 460 "E" St., South Boston, MA; motor carrier; Peerless Ins. Co. D 11/1/81	Nov. 1, 1976	Apr. 11, 1977	Boston, MA $25,000
Machado Trucking, Inc., Pier D, Berth 34, Long Beach, CA; motor carrier; Lumbermens Mutual Casualty Co.	Apr. 22, 1981	Oct. 16, 1981	Los Angeles, CA $50,000
Missouri Pacific Air Freight, Inc., 210 N. 13th St., St. Louis, MO; freight forwarder; St. Paul Fire & Marine Ins. Co. (PB 11/6/79) D 10/29/81	Sept. 28, 1981	Oct. 29, 1981	St. Louis, MO $100,000
Missouri Pacific Truck Lines, Inc., 210 N. 13th St., St. Louis, MO; motor carrier; St. Paul Fire & Marine Ins. Co. (PB 8/29/72) D 10/29/81	Sept. 28, 1981	Oct. 29, 1981	St. Louis, MO $100,000
C. W. Mitchell, Inc., 4401 North Westshore Blvd., Tampa, FL; motor carrier: St. Paul Fire and Marine Ins. Co. D 6/8/81	June 8, 1979	June 8, 1979	Tampa, FL $25,000
Overland Express, Division of TNT Canada, Inc., 2 Robert Speck Pkwy, Mississauga, Ontario, Canada; motor carrier; Continental Ins. Co. (PB 7/14/72) D 11/2/81[5]	Oct. 7, 1981	Nov. 2, 1981	Detroit, MI $50,000
Smith Tug & Barge Co., P.O. Box "S", Rainier, OR; water carrier; Hartford Accident & Indemnity Co. D 11/27/81	Feb. 5, 1971	Apr. 12, 1971	Portland, OR $50,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
TNT Canada, Inc.—(See Overland Express) Transcold Express Inc., P.O. Box 61228, Dallas, TX; motor carrier: Hartford Accident & Indemnity Co. D 10/27/81	Dec. 18, 1980	Apr. 7, 1981	Chicago, IL $50,000

[1] Surety is The Ohio Casualty Ins. Co.
[2] Surety is U.S. Fidelity & Guaranty Co.
[3] Surety is National Surety Corp.
[4] Surety is Fireman's Fund Ins. Co.
[5] Principal is Overland Western Ltd.

BON-3-03

GEORGE C. STEUART
(For Marilyn G. Morrison, Director,
Carriers, Drawback and Bonds Division).

(T.D. 81-295)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c) Tariff Act of 1930 as amended (31 U.S.C. 372 (c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
October 19–22, 1981	$0.000166
October 23, 1981	.000163
Chile peso:	
October 19–23, 1981	$0.025575
Colombia peso:	
October 19–23, 1981	$0.017683
Greece drachma:	
October 19, 1981	$0.017699
October 20, 1981	.017778
October 21, 1981	.017637
October 22, 1981	.017452
October 23, 1981	.017406
Indonesia rupiah:	
October 19–23, 1981	$0.001582

Israel shekel:	
October 19–21, 1981	$0.072674
October 22–23, 1981	.071942
Peru sol:	
October 19–23, 1981	$0.002188
South Korea won:	
October 19–23, 1981	$0.001459

(LIQ-01-03 O:C:E)
Dated: November 18, 1981.

KENNETH A. RICH,
Acting Chief,
Customs Information Exchange.

(T.D. 81-296)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
October 26–29,1981	$0.000163
October 30, 1981	.000161
Chile peso:	
October 26–30, 1981	$0.025575
Colombia peso:	
October 26–30, 1981	$0.017683
Greece drachma:	
October 26, 1981	$0.017129
October 27–29, 1981	.017182
October 30, 1981	.017584
Indonesia rupiah:	
October 26–30, 1981	$0.001582
Israel shekel:	
October 26–30, 1981	$0.071942
Peru sol:	
October 26–29, 1981	$0.002188
October 30, 1981	.002179

South Korea won:
October 26–29,1981 ..... $0.001459
October 30, 1981 ..... .001453

(LIQ–01–03 O:C:E)

Dated: November 29, 1981.

KENNETH A. RICH,
Acting Chief,
Customs Information Exchange.

(T.D. 81–297)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 81–285 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Brazil cruziero:
October 20–23, 1981 ..... $0.008872
Switzerland franc:
October 19, 1981 ..... $0.536337

(LIQ–03–01 O:C:E)

Dated: November 18, 1981.

KENNETH A. RICH,
Acting Chief,
Customs Information Exchange.

(T.D. 81–298)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 81–285 for the following countries. Therefore, as to entries covering merchandise exported

on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Brazil cruziero:	
October 26, 1981	$0.008872
October 27–30, 1981	.008709
Hong Kong dollar:	
October 28, 1981	$0.170882
Switzerland franc:	
October 29, 1981	$0.537634
October 30, 1981	.544959

(LIQ–03–01 O:C:E)

Dated: November 20, 1981.

KENNETH A. RICH,
Acting Chief,
Customs Information Exchange.

357–931 O – 81 – 2

U.S. Customs Service

General Notices

(19 CFR Part 134, Subpart D

Marking Imported Bolts, Nuts, and Rivets With Their Country of Origin

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a notice published in the Federal Register on August 10, 1979 (44 FR 47103), which proposed to amend the Customs Regulations to delete bolts, nuts, and rivets from the list of imported articles exempted from the country of origin marking requirements. Adoption of the proposal would have required bolts, nuts, and rivets to comply with the marking requirements in order to be imported into the United States.

After analysis of the comments received in response to the proposal and further review of the matter, Customs has determined that the proposal should not be adopted.

EFFECTIVE DATE: 11–30–81.

FOR FURTHER INFORMATION CONTACT: Samuel Orandle, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5765).

SUPPLEMENTARY INFORMATION:

Background

Unless expressly excepted, all articles of foreign origin imported into the United States are required by section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), to be marked in a conspicuous place in a legible, indelible, and permanent fashion so as to indicate, in English, to the ultimate purchasers in the United States, the country of origin of the articles. Among the exceptions to the country of origin marking requirements are articles which the Secretary of the Treasury, pursuant to public notice published in the Treasury Decisions before July 1, 1939, determined "were imported in substantial quantities

during the five-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin * * * " (19 U.S.C. 1304(a)(3)(J)). Under 19 U.S.C. 1304(a)(3)(J), notice that bolts, nuts, and rivets were imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during the period to be marked to indicate their country of origin was given in T.D. 49896 (4 FR 2509). The full list of articles exempted from marking requirements under 19 U.S.C. 1304(a)(3)(J) is set forth in section 134.33, Customs Regulations (19 CFR 134.33), referred to as the "J-List."

On June 8, 1978, the Treasury Department received a petition which alleged that bolts, nuts, and rivets were not imported into the United States in substantial quantities from 1932 to 1936 and, therefore, should not be exempted from country of origin marking requirements.

After review of the evidence in the petition, Customs published a notice in the Federal Register on August 10, 1979 (44 FR 47103), proposing that imported bolts, nuts, and rivets be removed from the "J-List" maintained in section 134.33.

Interested parties were given until October 9, 1979, to submit written comments concerning the proposal. The period of time for the submission of comments was extended until November 9, 1979, by a notice published in the Federal Register on October 10, 1979 (44 FR 58527). As discussed below, a majority of the numerous comments received opposed the proposal.

Discussion of Comments

A number of commenters assert that the test in this matter is not whether the imports are or are not substantial in comparison to U.S. production nor whether they represent a substantial portion of the domestic market. Several note that prior decisions removing articles from the "J-List" do not refer to such a test. Furthermore, the figures presented were considered by experts in 1939 and there is no need to revoke that decision now because the statistical evidence submitted by the petitioner does not establish clearly that bolts, nuts, and rivets were not imported in substantial quantities during the 5-year period in question.

The commenters further suggest that the Secretary of the Treasury is without authority to amend the "J-List" unless it is judicially proven that previous decisions regarding the "J-List" are demonstrated to be arbitrary, capricious, or an abuse of discretion. They contend that without knowledge of the Secretary's thought process in determining to place bolts, nuts, and rivets on the "J-List,"

Customs should not now, 40 years later, reverse the decision that the merchandise was imported in substantial quantities.

Other commenters, however, are of the opinion that implementation of the proposal would correct an error in originally placing fasteners on the "J-List" because the facts indicate that they were not imported in substantial quantities from 1932 to 1936.

Customs is of the opinion that these comments raise the primary questions which must be addressed in determining whether bolts, nuts, and rivets should be removed from the "J-List".

We agree that the issue is not whether imports are substantial in comparison to U.S. domestic production nor whether they comprise a substantial portion of the domestic market. We also agree that decisions made by the Secretary regarding this matter in 1939 should not be overturned unless they are arbitrary, capricious, or an abuse of discretion. However, we do not believe that this requires a judicial determination.

It must be presumed as a matter of law that the Secretary complied with statutory requirements in promulgating the "J-List," including a lawful determination that the classes or kinds of articles on the list were imported in substantial quantities during the period in question. While this presumption is rebuttable, Customs must require a strict standard of proof when asked to overturn an act of the Secretary taken in contemporaneous implementation of a statute 40 years ago.

A decision to remove bolts, nuts, and rivets from the "J-List" at this time would imply that the Secretary's action initially placing them on the list was improper. The courts have long given considerable weight to the judgment of administrative agencies charged with the interpretation and enforcement of statutes, especially when the judgment has been exercised contemporaneously with the enactment of the statute.

It is argued both that removal of bolts, nuts, and rivets from the "J-List" is necessary to carry out the intent of Congress and that removal would violate the intent of Congress in enacting country of origin marking requirements. Customs is of the opinion that the Secretary's decision to include nuts, bolts, and rivets on the "J-List" was reasonable and in accordance with the intent of Congress.

Some commenters suggest that practical problems which may arise if the proposal is implemented would, among others, include: difficulties inscribing long names to such small articles; cosmetic objections to marking items where the country of origin would be visible on the final product; and, the inability to mark certain articles because it would impair the precision and function of the finished product.

Other commenters contend that all products should be marked to give consumers freedom of choice in making purchasing decisions.

We agree that practical problems could arise if the proposal were implemented. However, the nature and extent of such problems is impossible to predict. We do not agree that all products should be marked. The law provides exceptions to country of origin marking requirements—*e.g.*, the "J-List."

Additional commenters note that even if the proposal were adopted, other exceptions to the marking requirements would be or should be applicable to certain types of bolts, nuts, and rivets.

Section 304(a)(3), Tariff Act of 1930 (19 U.S.C. 1304(a)(3)), provides exceptions to the country of origin marking requirements. The section contains 11 exceptions, including the "J-List." It is possible that bolts, nuts, and rivets could still qualify for one of the other exceptions if the proposal were adopted.

Commenters also observe that implementation of the proposal would: (1) impose an additional burden on foreign manufacturers; (2) increase the cost of production for foreign manufacturers; (3) increase the price of imported bolts, nuts, and rivets; (4) impose a nontariff barrier which may have an adverse effect on international trade; and, (5) increase the administrative burden on the Customs Service, Court of International Trade, and other Government agencies due to increased requests for other exceptions to the country of origin marking requirements.

Others believe that: (1) Customs should allow a single symbol or logo to be substituted for the country of origin; (2) country of origin marking would be duplicative and perhaps confusing where fasteners are already marked with the manufacturer's name; (3) only U.S. goods need to be marked with the country of origin; (4) the proposal is merely an attempt to protect the domestic fastener industry; and, (5) marking only the packages containing the merchandise would provide adequate notice of the country of origin to the ultimate purchaser.

Although these comments are not entirely on point, Customs believes that certain concerns are valid and that some of the problems which could arise as a result of adoption of the proposal are real. Other observations are speculative or do not provide Customs with sufficient information to address the issues presented. Some have no basis in law, and others are contrary to the purpose of the country of origin marking requirements.

Because of its decision in this matter, Customs does not believe it is necessary to address each of these comments.

ACTION

WITHDRAWAL OF PROPOSAL

In view of the foregoing, Customs has determined that the proposed change should not be adopted. Accordingly, the notice published in the Federal Register on August 10, 1979 (44 FR 47103), proposing to amend section 134.33, Customs Regulations, to delete bolts, nuts, and rivets from the "J-List," is withdrawn.

DRAFTING INFORMATION

The principal author of this document was Lawrence P. Dunham, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

Approved: November 20, 1981.
JOHN M. WALKER, JR.,
Assistant Secretary of the Treasury.

[Published in the Federal Register Nov. 30, 1981 (46 FR 58094)]

AMERICAN MANUFACTURER'S PETITION TO CLASSIFY HOUSEHOLD GLASSWARE; EXTENSION OF TIME FOR PUBLIC COMMENT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of extension of time for comment.

SUMMARY: This notice extends the period of time within which interested members of the public may submit comments with respect to a notice of receipt of an American manufacturer's petition relating to the classification of imported household glassware. A document inviting the public to comment on this notice of receipt of an American manufacturer's petition was published in the Federal Register on November 12, 1981 (46 FR 55822). Comments were to have been received on or before December 14, 1981. A request has been received to extend the period of time for the submission of comments claiming that additional time is needed to secure and have tested imported glassware, and prepare a brief of the pertinent facts and law in response to the invitation for comments. Customs believes additional time for comment is warranted. Accordingly, this notice extends the period of time for comment to February 16, 1982.

DATES: Comments must be received on or before February 16, 1982.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Thomas J. Lindmeier, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5727).

Dated: December 1, 1981.

DONALD W. LEWIS,
Director, Office of Regulations and Rulings.

[Published in the Federal Register Dec. 7, 1981 (46 FR 59690)]

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the U.S. Customs Service, and not otherwise published, is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Customs Service Decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the U.S. Customs Service.

A copy of any decision included in this listing, identified by its date and file number, may be obtained in a form appropriate for public distribution upon written request to the Office of Regulations and Rulings, Attention: Legal Retrieval and Dissemination Branch, Room 2404, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. These copies will be made available at a cost to the requester of $0.10 per page. However, the Customs Service will waive this charge if the total number of pages copied is ten or less.

Decisions listed in earlier issues of the CUSTOMS BULLETIN, through June 15, 1981, are available in microfiche format at a cost of $34.05 ($0.15 per sheet of fiche). It is anticipated that additions to the microfiche will be made quarterly and subscriptions are available. Requests for the microfiche now available and for subscriptions should be directed to the Legal Retrieval and Dissemination Branch. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: December 2, 1981.

B. JAMES FRITZ,
Director,
Regulations Control and Disclosure Law Division.

Date of Decision	Number	Issue
10-27-81	066916	Classification: Warm-up suits (382.78)
11-13-81	068235	Classification: Sport glove made of cabretta leather (734.56, 735.07)

Date of Decision	Number	Issue
10-27-81	068351	Classification: Denim jackets (380.12, 382.12)
11-06-81	068527	Classification: Optical reader/automatic coding system used to code/sort mail (664.10, 676.15, 676.30, 684.64, 685.90)
11-06-81	068585	Classification: Hollow copper conductors (685.90)
10-27-81	068689	Classification: Chrame-plated tubular stainless steel sleeve used on shafts to replace metal worn by oil seal contact (681.39, 692.02-692.16, 692.32)
11-12-81	068771	Classification: Machine tools (649.43, 674.32)
11-05-81	068812	Classification: Wrecked BMW automobiles (692.10, 793.00)
11-12-81	068846	Classification: Ice scraper brushes, squeegee/sponges, floor mats (750.70, 774.55, 774.60)
11-05-81	068935	Classification: Automobiles: 1982 model Subaru BRAT is not an automobile truck for tariff purposes (692.10)
11-05-81	068986	Classification: Computer disk drive used in a computer system to expand storage and other capabilities (676.30, 676.52, 678.50)
10-23-81	069033	Classification: Printed wiring cards (PWCs) used in digital switching systems (684.62, 737.05)
10-30-81	069065	Classification: Electronic typewriters (676.05, 676.07)
10-30-81	069075	Classification: Sewing machine attachments (672.25)
11-12-81	069089	Classification: Grid lacquer paper (254.85)
10-30-81	069160	Classification: Automotive exhaust headers (660.67, 692.32)
11-05-81	069195	Classification: Rayon tote bag (386.09, 706.24).
11-12-81	069258	Classification: Accelerometer used in engine vibration monitoring system (688.47, 712.49).
05-13-81	105149	Vessels: 46 U.S.C. 316(a) prohibits a foreign tug from towing a U.S. vessel for part of a coastwise voyage even though conducted on the high seas.
10-26-81	105341	Vessels: Transshipment of merchandise for export in a LASH barge between mother vessels in a U.S. port other than at the U.S. port where initially laden constitutes a violation of 46 U.S.C. 883.
11-04-81	105356	Vessels: Debris that will not be used commercially or in trade, but is dumped worthless, is not considered "merchandise" under 46 U.S.C. 883 and may be transported between points embraced within the coastwise laws.
11-09-81	105368	Vessels: Tonnage to be used in computing the tonnage tax on a dual tonnage vessel.
11-13-81	105381	Vessels: Refund of special tonnage tax and light money assessed pursuant to 46 U.S.C. 121 and 46 U.S.C. 128.
11-02-81	105384	Instruments of International Traffic: "Porta Bins" used in the transportation of organic perioxides are considered instruments of international traffic within the meaning of 19 U.S.C. 1322(a) and 19 C.F.R. 10.41a.

357-931- O 81 - 3

Date of Decision	Number	Issue
11–16–81	105403	Vessels: The dutiable status of new and used British sailing yachts imported for sale or charter is dependent upon appraised value.
11–09–81	542549	Value: Advertising allowance freely offered to all purchasers for export to the U.S. is not dutiable.
11–10–81	542558	Value: Dutiability of certain quota charges under transaction value paid separately to the foreign processor.
10–30–81	542603	Value: A buying agent's functions and responsibilities under the TAA and dutiable status of quota payments.
11–12–81	717359	Marking: Country of origin marking requirements regarding barbecue grill parts.

Decisions of the United States Court of Customs and Patent Appeals

(Appeal No. 81–10)

MOUNT WASHINGTON TANKER COMPANY, A SUBSIDIARY OF VICTORY CARRIERS, INC. *v.* THE UNITED STATES

1. JUDGMENT OF U.S. CT. OF INTERNATIONAL TRADE—REPAIRS MADE ON U.S. VESSEL IN INTERNATIONAL WATERS BY FOREIGN CREW

The judgment of the United States Court of International Trade that "repairs made in a foreign country" in 19 U.S.C. 1466(a) must be interpreted to comprehend repairs performed on board a vessel in international waters by workers hired as a special repair crew from a foreign country is affirmed.

2. ID. MEANING OF "FOREIGN COUNTRY"

"Foreign country" has no common meaning which is independent of statutory context.

3. CONGRESSIONAL INTENT TO IMPOSE DUTY TO EQUALIZE COSTS OF REPAIRS PERFORMED BY FOREIGN VERSUS DOMESTIC LABOR

The intention of Congress underlying 19 U.S.C. 1466(a) was to equalize, by the imposition of the duty prescribed by statute, the relative costs of repairs performed by foreign versus domestic labor, in order to encourage U.S. shipowners to employ U.S. labor whenever possible.

F. 2d

MOUNT WASHINGTON TANKER COMPANY, A SUBSIDIARY OF VICTORY CARRIERS, INC., APPELLANT *v.* THE UNITED STATES, APELLEE

No. 81–10

United States Court of Customs and Patent Appeals, November 25, 1981, Appeal from United States Court of International Trade.

[Affirmed]

John S. Rode and *David C. Williams*, attorneys for appellant. W. Thaddeus Miller amicus curiae Ogden Marine, Inc.

Stuart E. Shiffer, Acting Asst. Atty. General, *David M. Cohen*, Director, *Joseph I. Liebman*, Attorney in charge and *Madeline B. Kuflik*, attorneys for appellee.

[Oral argument on October 5, 1981 by *David C. Williams* for appellant, *W. Thaddeus Miller* for amicus curiae Ogden Marine, Inc., and *Madeline B. Kuflik* for appellee.]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, MILLER, and NIES, *Associate Judges*.

BALDWIN, *Judge*.

This is an appeal from a decision of the United States Court of International Trade [1] in which the phrase "repairs made in a foreign country" appearing in 19 U.S.C. 1466(a) [2] was construed, apparently for the first time. On the facts presented, the Court of International Trade concluded, *inter alia*, that the routine ship repairs on board appellant's oil tanker while it was on the high seas by employees of a Swedish corporation hired for the task were "made in a foreign country" within the meaning of § 1466(a) and that the costs of such repairs were subject to the 50% duty imposed by statute. [1] We affirm.

BACKGROUND

There is no dispute between the parties over the pertinent facts, which can be summarized briefly. Appellant operates the oil tanker T/S *Mount Washington*, a vessel of U.S. registry. In 1968 the *Mount Washington* was under charter to deliver oil between various Pacific Ocean ports. During this period, the *Mount Washington* required certain routine repairs, primarily to the tanker's electrical generator. Pursuant to a preexisting agreement between appellant and Nicoverken, AB (Nicoverken), a Swedish corporation,[3] electricians and fitters employed by Nicoverken were flown from Gothenburg, Sweden, to the Philippines, to make the repairs on board the *Mount Washington*. After signing on as crewmen, the Swedish workers began the repairs on March 30, 1968, completing them on May 12, 1968, at a total cost, including labor, transportation, and material, of $11,122.61. In the meantime, appellant's tanker was within the borders of a foreign country (either the Philippines, Singapore, or Bahrein) for

[1] *Mount Washington Tanker Co* v *United States* No 73-6-01399, slip op 80-8 (Dec 5, 1980), hereinafter "slip opinion"

[2] The relevant portion of § 1466(a) is abstracted below:

§ *1466. Equipment and repairs of vessels subject to duty penalties*

(a) The equipments, or any part thereof, including boats, purchased for, or the repair parts or materials to be used, or the expenses of repairs made in a foreign country upon a vessel documented under the laws of the United States to engage in the foreign or coasting trade, or a vessel intended to be employed in such trade, shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an ad valorem duty of 50 per centum on the cost thereof in such foreign country.

[3] More specifically, the Swedish repair team was provided by Nicoverken through its U.S. agent, Wilson Walton International, Inc. of New Jersey, with whom appellant contracted.

a total of approximately nine days, the rest of the time being spent at sea.

When the *Mount Washington* returned to the United States, docking in Honolulu, the Customs Service assessed duties on the expenses of the repairs made by the Nicoverken employees, including in its computation of duties the expenses incurred by appellant for repairs performed both in foreign port and at sea. When its petition for remission of the duty was denied, appellant brought the present action, alleging primarily that the Customs Service had improperly included in the dutiable amount the cost of repairs performed in international waters and not "in a foreign country," as required by §1466(a).

After considering the legislative history of §1466, the trial court held that the dutiable amount must include the costs of repairs made both in foreign port and on the high seas. Before us, appellant advances three grounds for reversing the trial court's decision. First, as a matter of law, ships at sea and the property on them remain within the country of registry; consequently, on-board repairs to a U.S. registered vessel in international waters are technically performed in the United States rather than "in a foreign country." Second, well-recognized tenets of a statutory construction and the applicable case law alike require that "foreign country" be given its "common meaning," said to connote a sovereign territory. Third, even if reference to the legislative history is deemed necessary (and appellant does not concede this) the background material on §1466(a) indicates only that Congress intended the protection afforded by §1466(a) to extend solely to direct competition from foreign shipyards *per se*.

OPINION

As a preliminary issue, we must decide whether it is appropriate for us now, in construing "repairs made in a foreign country," to look behind the language of § 1466(a) to ascertain the underlying congressional intent. In their briefs, the parties have cited case law as authority both for and against the proposition that the phrase "foreign country" has some "common meaning" which is more or less divorced from the particular statutory context in which it appears. However, [2] we agree with the trial court that no common meaning for "foreign country" can be abstracted from these cases.

Moreover, we are not persuaded that *Procter & Gamble Mfg. Co.* v. *United States*, 60 Treas. Dec. 356, T.D. 45099 (1931), 19 CCPA 415, T.D. 45578, *cert. denied*, 287 U.S. 629 (1932), and its progeny [4] compel

[4] See *William Camp Co.* v. *United States*, 70 Treas. Dec. 611, T.D. 48623 (1936); *Doremus Fisheries* v. *United States*, 61 Treas. Dec. 960, T.D. 45642 (1932).

the conclusion that a meaning for "foreign country" in § 1466(a) must be adopted from admiralty law, as appellant contends. In *Procter & Gamble*, the Customs Court (now the U.S. Court of International Trade) had denied a protest of a duty on the value of imported oil obtained from whales caught in the Ross Sea, Antarctica, and processed on board a Norwegian vessel in international waters. In disallowing protestor's claim that the whale oil was not imported from a "foreign country," and therefore was not dutiable under applicable tariff provisions, the Customs Court looked first to legislative purpose, concluding that Congress' intention to raise revenue on whale oil produced within foreign territorial limits was logically inconsistent with exempting from taxation oil produced on the high seas in a foreign vessel. In support of its decision, the Customs Court in *Procter & Gamble* cited, among others, authority dating from the previous century to the effect that vessels on the high seas are subject to the jurisdiction of the state to which they belong, i.e., they are in a sense extensions of that state' sovereignty.

Appellant argues that this latter rationale of the trial court in *Procter & Gamble* provides a definitive interpretation of "foreign country," as applied in cases, including the present one, generally concerned with the legal disposition of conduct in international waters. However, appellant has read *Procter & Gamble* too broadly, and in so doing, loses sight of the trial court's basic point of reference, congressional intent. Analogies to admiralty law, however appropriate an aid to interpreting another statute under a completely unrelated fact pattern in order to implement a different legislative policy,[5] are not necessarily relevant to, let alone binding upon, our deliberations here.[6]

In line with the foregoing, we note the statement of Chief Justice Hughes, made in a somewhat different context, that "[t]he term 'foreign country' is not a technical or artificial one, and the sense in which it is used in a statute must be determined by reference to the purpose of the particular legislation." *Burnet* v. *Chicago Portrait Co.*, 285 U.S. 1, 6 (1932) (footnote omitted).[7] Accordingly, we must look

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[5] The purpose behind the tariff provision construed on *Procter & Gamble* was the raising of revenue. In contrast, the predominant legislative goal underlying § 1466(a) is to encourage U.S. shipowners to have their repair work done by U.S. labor. See note 8 infra, and associated text.

[6] Notably, in upholding the trial court's judment in *Procter & Gamble*, this court strongly emphasized the need to interpret "foreign country" in light of legislative intent; no mention of analogies to other legal principles was made.

[7] The issue considered by the *Burnet* Court was whether taxes levied by the State of New South Wales, a political subdivision of the Commonwealth of Australia, were paid "to any foreign country" within the meaning of the 1921 Revenue Act's foreign tax credit provision. Appellant attempts to dismiss *Burnet*, as well as the other decisions cited by appellee, on the ground that "foreign country" was not considered in any context similar to that presented in this case. Appellant thus overlooks the significance of *Burnet* and the other decisions as indicators of judicial willingness to adapt the interpretation of "foreign country" to the circumstances and legislative concerns extant in a particular case.

to the legislative history of § 1466(a) to discern the nature of the protection which Congress intended to provide, and which we are obliged to effect. *See, e.g., Sandoz Chemical Works* v. *United States*, 43 CCPA 152, C.A.D. 623 (1956).

The statutory background to Section 466 of the Tariff Act of 1930 (now 19 U.S.C. 1466) was considered in *United States* v. *Gissel*, 353 F. Supp. 768, 772 (S.D. Tex. 1973), *aff'd*, 493 F. 2d 27 (5th Cir. 1974). The federal district court in *Gissel* stated:

> The Tariff Act of 1930 included within its formal title the following purpose: "An Act to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States to protect American labor, and for other purposes." 46 Stat. 590 (1930). This statute provides for the imposition and collection of customs duties upon entry of various foreign merchandise into the United States. Since foreign repair parts on vessels were generally thought of and classified as dutiable merchandise and since it was Congressional policy to encourage the obtaining of American flag vessel repairs in American shipyards, such repairs were expressly included as dutiable merchandise within a provision of the Tariff Act. The tariff law has contained such a provision in substantially the same form since the enactment of section 23 of the Tariff Act of 1866, 14 Stat. 183 (1866).

The predecessor to the United States Court of International Trade subsequently elaborated the analysis of the *Gissel* court, concluding:

> It is clear that the purpose of section 1466(a) was to protect the American shipbuilding and repairing industry. *United States* v. *Gissel*, 353 F. Supp. 768, 772 (S.D. Tex. 1973), *aff'd*, 493 F. 2d 27 (5th Cir. 1974). In addition to noting the Congressional purpose of the statute, in *Suwannee Steamship Company* v. *United States*, 435 F. Supp. 389, 394, 79 Cust. Ct. 19, 26, C.D. 4708 (1977), this court stated that:
>
> > "Both the hearings of the Senate Committee, and the committee's final report on section 466, evidence the concern of the committee members that the House amendment would have provided insufficient protection for American shipyards, the class for whose benefit the section was originally formulated. *See Senate Hearings on H.R. 2667*. 71st Cong., 1st Sess., Vol. XVII at 537–46 (1929). S. Rep. No. 37, 71st Cong., 1st Sess. 72 (1929)."

Erie Navigation Co. v. *United States*, 83 Cust. Ct. 47, C.D. 4820, 475 F. Supp. 160, 163 (1979).

The trial court, taking its lead from the *Gissel*, *Erie* and *Suwannee* opinions, stated (slip opinion at 17–18):

> That labor was also included in the protection afforded the domestic shipbuilding and repair industries is fully supported by the legislative history of section 1466 and its predecessor provisions. During Congressional hearings on H.R. 2667, which

became the Tariff Act of 1930, the report of the House Ways and Means Committee stated:

> "The *labor cost* in production *is an essential factor*. The average rate of wages abroad is 40 percent or less than that in the United States. While the effectiveness of foreign labor is increasing, their wage scales have not increased in proportion. This creates a serious situation not only for the manufacturer *but for the laborer*." H.R. Rep. No. 7, 71st Cong., 1st Sess. 4 (1929). [Emphasis added.]

See also Hearings Before the Committee on Ways and Means of the House of Representatives, Tariff Readjustment—1929, 70th Cong., 2d Sess. (1929), Vol. XVI, p. 10290. It should also be noted that one of the expressly stated purposes of H.R. 2667 was "to protect American labor."

Appellant seeks to qualify the trial court's characterization of the congressional purpose of §1466(a), citing "evidence in the legislative history that the Congress intended to protect American labor, but only as a component of the United States shipyard industry." Accordingly, appellant concludes "the Congress was concerned with *shipyard* labor when it enacted the statute. Since the physical facilities of a shipyard are obviously located ashore, the Congress chose physical site of the repairs as the criterion for determining dutiability." [Emphasis in original.]

We find appellant's argument too narrowly drawn in light of [3] Congress' clear intention to equalize, by imposition of the prescribed duty, the relative costs of repairs performed by foreign versus domestic labor, in order to encourage U.S. shipowners to employ U.S. labor whenever possible. It may be true, as appellant asserts, that in §1466(a) Congress has struck a balance between competing groups (U.S. shipowners and shipyards, respectively) which represents "a limited circumscribing of the interests of * * * shipowners in favor of * * * shipyards," and that we should not so construe §1466(a) as to upset this balance by unduly burdening U.S. shipowners. Nevertheless, we fail to see how an interpretation of §1466(a) that encourages shipowners, as Congress intended, to employ U.S. labor to effect repairs, save in certain well-defined circumstances,[8] *a priori* imposes a heavier burden on shipowners than can be justified by reference to the statute.

Appellant has urged that the trial court improperly substituted worker nationality for the situs criterion Congress intended should be the touchstone for dutiability. However, we do not read the trial court's opinion as enunciating so mechanical a test. Rather, the trial court concluded that the legislative purpose of § 1466(a) would

[8] Congress has indicated quite clearly the circumstances under which duties paid on repair costs may be remitted. For example, the Secretary of the Treasury is authorized to refund duties paid if the repairs are compelled by stress of weather of other casualty and are prerequisite to the vessel's seaworthiness, 19 U.S.C. §1466(d)(1), or are performed by U.S. residents or regular crewmembers, 19 U.S.C. §1466(d)(2).

be frustrated if those costs incurred when appellant chose to forego available U.S. labor [9] and to have routine repairs performed on board by workers hired as a special repair crew from a foreign country were declared non-dutiable.

We fully concur in the judgment of the trial court on this point. Appellant availed itself of foreign labor to the detriment of the U.S. workers that Congress sought to protect. Therefore, "repairs made in a foreign country" in § 1466(a) must be interpreted to compregend the repairs made to appellant's vessel in international waters.

CONCLUSION

The judgment of the United States Court of International Trade is *affirmed*.

[9] Appellant has conceded that American shipyards can perform onboard repairs, in competition with foreign ship-building and repair corporations like Nicoverken.

United States Court of International Trade

Decisions of the United States Court of International Trade

(Slip Op. 81–103)

BORDER BROKERAGE CO., INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Before RICHARDSON, *Judge*.

Consolidated Court No. 76–11–02551

Halibut snaps—Clasps

The subject merchandise consisting of halibut snaps and exported from Canada was classified under TSUS item 731.60, as modified, as *fishing tackle not specially provided for*. The importer claimed the

merchandise should be classified under TSUS item 745.68, as modified, as *clasps or snap fasteners*. The weight of the evidence, including definitions from lexicons read into the record, and the case law support plaintiff's claim.

Held, judgment for the plaintiff. The term "fishing tackle" in item 731.60 of the Tariff Schedules of the United States is limited to implements and equipment used in fishing for sport and does not include halibut snaps. Halibut snaps are "clasps" or "snap fasteners" described as "fishing gear" or "terminal gear" used for commercial fishing and should be classified under item 745.68 TSUS.

[Judgment for plaintiff.]

(Decided November 16, 1981)

George R. Tuttle, A Professional Corporation (*Stephen S. Spraitzar* at the trial and on the briefs), for the plaintiff.

J. Paul McGrath, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Madeline B. Kuflik* at the trial; *Susan Handler-Menahem* on the brief), for the defendant.

RICHARDSON, *Judge:* The merchandise in this consolidated case, consisting of halibut snaps, was exported from Canada at various times between 1971 and 1976, and classified in liquidation under TSUS item 731.60, as modified by T.D. 68–9, as *fishing tackle, not specially provided for*, and assessed for duty at 15 or 12.5 *per centum ad valorem*, depending upon the date of entry. It is primarily claimed by the importer that the merchandise should be classified under TSUS item 745.68, as modified by T.D. 68–9, as *clasps or snap fasteners* valued over 20 cents per dozen pieces or parts, at the duty rate of 10 or 8.5 *per centum ad valorem*, depending upon the date of entry. Alternatively, the importer claims that the merchandise should be classified under TSUS item 657.20, as modified by T.D. 68–9, as articles of iron or steel, not plated or coated with precious metal, at the duty rate of 11 or 9.5 *per centum ad valorem*, depending upon the date of entry.

There is no question but that the imported halibut snaps are articles or implements employed in fishing. Defendant admits that the imported merchandise consists of a metallic fastening which is used to connect fishing lines, that it contains a metallic device with a catch or fastening that closes or locks with a click and is provided with a spring, and that it is made of iron or steel not coated or plated with a precious metal (exhibit 5).

Gerald Packard, head of the Commercial Crab, Black Cod and Halibut Fisheries at Seattle Marine & Fishing Supply Company, testified that he is familiar with the use of halibut snaps and has personally sold halibut snaps to halibut fishermen, that exhibit 1 is a

representative sample of the imported merchandise, differing only in the coating—the imported article being hot zinc plated whereas the sample is galvanized, and that in all other respects exhibit 1 is a representative sample of a long-line halibut snap described in entry 123207 which was sold by Summerfield Manufacturing to Seattle Marine.

It was brought out in the witness' testimony that the purpose of a halibut snap-on, as the witness called it, is to fasten the gangens onto the ground line. A gangens is a length of rope measuring between 36 and 60 inches in length having a loop or eye at either end, with a fish hook attached at one end and a halibut snap at the other end. In a fishing operation a ground line, measuring about 1800 feet long, is paid out over the side of a boat and a gangens is fastened onto the line by means of the halibut snap at intervals of 80 to 120 gangens per line.

According to Mr. Packard, who has been with Seattle Marine for 32 years both in his present position and as a shipping and sales clerk, halibut snaps are used only in the commercial fishing industry, and are referred to by commercial fishermen as "snap–ons" or "halibut snap-ons". Mr. Packard was of the opinion that the term "fishing tackle" referred to sporting goods such as rods, reels, and fishhooks used in sport fishing. He said commercial fishermen refer to their equipment as fishing "gear" and not as "fishing tackle"

Mr. Packard's testimony relative to the term "fishing tackle" was essentially corroborated by the testimony of Luhr Jensen, chairman of Luhr Jensen, Inc. of Hood River, Oregon, and president of Luhr Jensen and Sons, Ltd. of Vancouver, B.C., Canada. Luhr Jensen, Inc., manufactures fishing tackle and commercial fishing gear. Mr. Jensen stated that his commercial fishing business approaches a half million dollars. In his opinion halibut snaps or gear are used in commercial fishing only, and he had never heard commercial fishermen refer to their equipment as fishing tackle. Commercial fishermen refer to it as fishing gear or terminal gear.

It was brought out in the testimony of Mr. Jensen that halibut snaps were developed primarily as a safety feature, and also as a faster method of shooting the line over the stern of a boat and retrieving it. Originally, the traditional method of attaching the gangens to the line was by tying it onto the ground line. However, as the line was retrieved, fishermen risked being hooked in the face or clothing as they were untying the gangens from the line. Halibut snaps provide a safer method by eliminating the untying step.

The testimony of James Armstrong, manager of John Redden Net Company of Bellingham, Washington, relative to nomenclature, is to the same effect. His company handles all types of commercial

fishing gear, including nets, trolling gear, halibut gear, crab gear, and any type of fish gear used by commercial fishermen. He also stated that the term "fishing tackle" such as rods, reels, hooks, lines, and leaders are used by sport fishermen.

Not to the same effect, on the matter of nomenclature, however, is the testimony of William E. Smith, owner of a company carrying his name that manufactures both commercial and sport fishing equipment. Mr. Smith testified that he has traveled throughout the United States, Europe and South America, sold commercial fishing equipment all over the United States, attended commercial fishing shows around the world, and has designed halibut snaps. He testified that halibut snaps are not limited to commercial fishing use, but commercial fishing is their primary use, and they are known only by that name on the west coast. Halibut snaps can be used for almost any species of fish. As to the nomenclature "fishing tackle", which he regarded as being a subjective term, and "terminal gear", Mr. Smith testified (R. 64–65) that the terms "fishing tackle" and "terminal gear" were basically synonymous. He said that a gangen is called a snood on the east coast, and that he called halibut snaps "snap-on connectors". In his opinion an angler is a sport fisherman. On cross-examination he admitted that he would refer to plaintiff's exhibit 1 as "terminal gear", and that it would be difficult to characterize it as "fishing tackle" (R. 74).

During the trial attention was called to definitions of the word "clasp", among other things. Mr. Packard thought that a halibut snap could be a clasp. Mr. Jensen said he would consider a halibut snap to be a type of clasp for clasping the gangens onto the ground line. And Mr. Smith agreed that he would have to call it a clasp under Webster's definition that a clasp is a releasable catch for holding two or more objects together.

Plaintiff argues that the imported merchandise is a clasp because it fastens the gangens to the ground line and, therefore, should be classified under the *eo nomine* provision therefor in item 745.68 which, plaintiff asserts, embraces all forms of the article. Plaintiff further argues that the imported merchandise is excluded from classification under item 731.60 because the halibut snap is *commercial fishing equipment* and, as such, does not come within the ambit of the term "fishing tackle" which is limited to equipment used in sport fishing.

Defendant argues that an *eo nomine* designation does not include all forms of an article where Congress intended otherwise, as it feels is the case with respect to all forms of fishing tackle inclusive of the subject merchandise. Defendant further argues that the term "fishing tackle" in item 731.60 is inclusive of articles used in fishing without regard to use in commercial or sport fishing.

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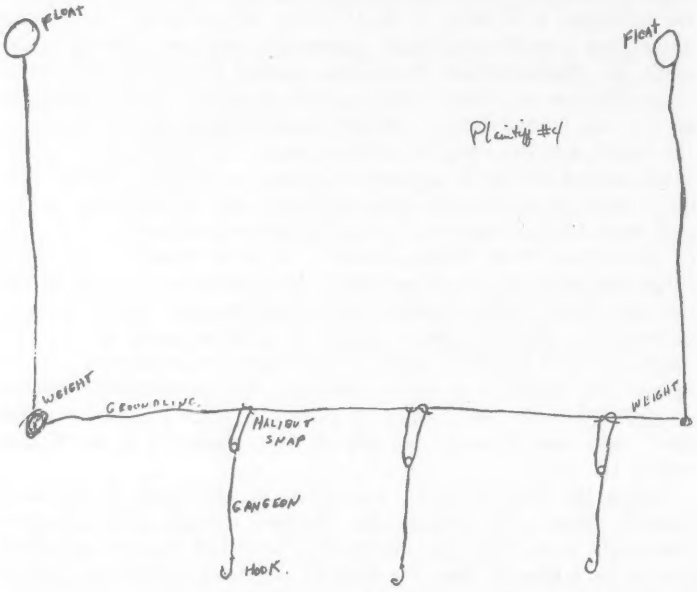
Plaintiff's exhibit 4, admitted into evidence, graphically shows how the halibut snap is clasped or fastened on to the ground line and the gangen.



The court agrees with the plaintiff. In *Fenton* v. *United States*, 1 Ct. Cust. Appls. 529, 532, T.D. 31546 (1911), which involved imported pieces of cork used in the manufacture of fishing floats, the Court of Customs Appeals held that said pieces of cork could not be regarded as "fishing tackle" in the unfinished state in which they were imported, and were properly classified as manufactures of cork. The court interpreted the statute [paragraph 165 of the Tariff Act of 1909] to use the words "fishing tackle" in the sense of "an angler's outfit; angling gear; the hooks, lines, rods, and other implements of the art of fishing" as defined in *The Century Dictionary*.[1] An "angler" is one who fishes with an "angle", i.e., a hook (*Webster's New International Dictionary*, 1953).

The concept of "fishing tackle" in the *Fenton* case was followed in *International Distributors, Inc.* v. *United States*, 57 Cust. Ct. 369, 372 C.D. 2822 (1966), where the court held that the term "fishing

[1] The revisers of the dictionary transferred the phrase "fishing tackle" and placed it wunder theord "tackle" as "apparatus for fishing (fishing tackle)." See *The New Century Dictionary*, page 1934 (1946).

tackle" means equipment used by "anglers", those who fish with a hook and line for diversion and not the equipment used in net fishing, primarily commercial. The opinion points out that "the Summary of Tariff Information (1929), schedule 3, page 738, under the heading 'Fishing Tackle' says: 'The fishing tackle covered by this paragraph is used principally by sportsman. * * *'"

In *Manton Cork Corp.* v. *United States*, 65 Cust. Ct. 241, C.D. 4084 (1970), Judge Re speaking for the court continued to adhere to the distinction between sport fishing and commercial fishing.

All witnesses agreed that the purpose of the halibut snaps was to snap or fasten the gangens onto the ground line. Witness Packard said in his opinion a halibut snap met the definition of a "clasp" defined in the *Random House Dictionary of the English Language*, The Unabridged Edition (1966) as: "a device, usually of metal, for fastening together two or more things or parts of the same thing. * * *"

Mr. Jensen agreed with the definition in *Funk and Wagnalls New Standard Dictionary* (1937) of a "clasp" as: "a fastening by which things or parts of a thing are bound or held together", and he considered a halibut snap to be a clasp used to clasp the gangens onto the ground line.

Mr. Armstrong agreed with the testimony of witnesses Packard and Jensen with respect to clasps.

Mr. Smith said a halibut snap is a fastener within the definition of a "clasp" in *Webster's Third New International Dictionary* (1961): "a releasable catch for holding together two or more objects * * * or complimentary parts of something.* * *"

The terms "clasps" and "snap fasteners" as used in item 745.68 of the Tariff Schedules of the United States are *eo nomine* provisions. The Court of Customs Appeals in construing the terms "snap fasteners" and "clasps" in paragraph 348 of the Tariff Act of 1922 (which language is substantially the same as that in item 745.68), held them to be *eo nomine* provisions. *United States* v. *Murphy & Co.*, 13 Ct. Cust. Appls. 456, T.D. 41348 (1926). These terms in item 745.68 are construed to be *eo nomine* provisions.

The court concludes that the term "fishing tackle" in item 731.60 is limited to implements and equipment used in fishing for sport and does not include halibut snaps. Halibut snaps are "clasps" or "snap fasteners" described as "fishing gear" or "terminal gear" used for commercial fishing, which should be classified under item 745.68.

Judgment will be entered herein accordingly.

(Slip Op. 81–104)

CARLISLE TIRE AND RUBBER COMPANY, PLAINTIFF *v.* UNITED STATES, DEFENDANT

Before MALETZ, *Judge.*

Court No. 79–3–00423

Memorandum and Order

(Dated November 17, 1981)

Eugene L. Stewart and *Daniel G. Rooney* for the plaintiff.

J. Paul McGrath, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch (*Sheila N. Ziff* on the brief), for the defendant.

Lauren R. Howard; Collier, Shannon, Rill & Scott of counsel; for amicus curiae Bicycle Manufacturers Association of America, Inc.

MALETZ, *Judge:* Plaintiff, a domestic manufacturer of bicycle tires and tubes, challenged a negative countervailing duty determination published by the Secretary of the Treasury on January 8, 1979 involving bicycle tires and tubes from Taiwan, 44 F.R. 1815. In substance, the Secretary found that while Taiwanese bicycle tire and tube manufacturers received benefits from the Government of Taiwan, the amounts were *de minimis* and therefore not countervailable.

On June 18, 1981, this court denied the parties' cross-motions for summary judgment. The court, in addition, vacated the Secretary's negative countervailing duty determination; stayed the action; and remanded it to the Secretary of Commerce (to whom the functions of the Secretary of the Treasury had been transferred) with directions to make and submit to the court within 120 days a redetermination. *Carlisle Tire and Rubber Company* v. *United States*, 1 CIT—, 517 F. Supp. 704 (1981).[1]

In compliance with the court's order of June 18, 1981, the Secretary, on October 23, 1981, made and submitted to the court a redetermination that bicycle tires and tubes manufactured by the Taiwanese firm of Cheng Sin received bounties or grants in the net amount of 0.893 percent ad valorem. 46 F.R. 53201.

Subsequently, on November 16, 1981, plaintiff advised the court that it acquiesces in this redetermination.

Given these considerations, the court hereby affirms the results of this redetermination and directs the Secretary of Commerce to issue a countervailing duty order with respect to bicycle tires and tubes manufactured by Cheng Sin.

[1] In its opinion, the court observed that while it could decide *de novo* the issues presented, a remand would still be appropriate on the basis that a new investigation may lead to a countervailing duty redetermination with which plaintiff agrees, thereby obviating the need for a trial. 517 F. Supp. at 709. As indicated here, this is precisely what occurred.

(Slip Op. 81–105)

COMMITTEE TO PRESERVE AMERICAN COLOR TELEVISION (a.k.a. COMPACT) AND IMPORTS COMMITTEE, TUBE DIVISION, ELECTRONIC INDUSTRIES ASSOCIATION, PLAINTIFFS *v.* UNITED STATES, DEFENDANT

Before MALETZ, *Judge.*

Court No. 81–3–00258

On Plaintiffs' Motion for Partial Summary Judgment and Defendant's Cross-Motion for Partial Summary Judgment

[Plaintiffs' motion denied and defendant's cross-motion granted.]

(Decided November 18, 1981)

Collier, Shannon, Rill & Scott (*Paul D. Cullen* and *Robert L. Meuser* on the briefs) for the plaintiffs.

J. Paul McGrath, Assistant Attorney General (*David M. Cohen,* Director Commercial Litigation Branch, on the briefs), for the defendant.

MALETZ, *Judge:* Plaintiffs, representing members of the United States television industry and its workers, challenge as unlawful certain settlement agreements into which the United States had entered on April 28, 1980 with various importers of television sets from Japan. As a first cause of action, the complaint alleges that the settlement was not authorized by statute. Alternatively, as a second and third cause of action, the complaint alleges that even assuming the existence of statutory authority for the settlement, the Government officials who recommended and determined that the claims should be settled acted arbitrarily, capriciously, in bad faith and unlawfully. It is undisputed that by virtue of 28 U.S.C. § 1581(i)—which was provided for by the Customs Courts Act of 1980 (94 Stat. 1729)—this court has jurisdiction to entertain the action.

Plaintiffs have moved for partial summary judgment on their first cause of action and defendant has cross-moved for partial summary judgment on that cause of action.

The case arises as follows: On March 10, 1971, the Secretary of the Treasury issued a finding of dumping of television sets from Japan, thereby making such sets subject to antidumping duties.[1] T.D. 71–76, 36 Fed. Reg. 4597 (1971). From the date of this finding through 1979, most of these duties were not collected. On March 28, 1980, the Secretary of Commerce[2] announced an administrative review of the dumping finding (45 Fed. Reg. 20511), as required by

[1] The Secretary of the Treasury's dumping finding was made pursuant to section 201(a) of the Antidumping Act of 1921, as amended (19 U.S.C. § 160(a)), an enactment which was repealed by the Trade Agreements Act of 1979, Pub. L. No. 96-39, Title I, § 106(a), 93 Stat. 193. However, pursuant to section 106(a) of the Trade Agreements Act of 1979, this dumping finding remained in effect.

[2] The Secretary of the Treasury's responsibility to administer antidumping matters has been transferred to the Secretary of Commerce by Reorg. Plan No. 3 of 1979, § 5(a) (1) (C), 44 Fed. Reg. 69273 (1979).

section 751 of the Tariff Act of 1930, as added by the Trade Agreements Act of 1979 (19 U.S.C. §1675).[3] On April 28, 1980, prior to to the completion of this administrative review, the Secretary of Commerce settled all claims for antidumping duties arising from entries of the sets from July 1, 1973 to March 31, 1979. Plaintiffs then filed this action challenging the lawfulness of this settlement.

We now consider plaintiffs' motion for partial summary judgment on their first cause of action.[4] Specifically, plaintiffs contend that the settlement is not authorized by section 617 of the Tariff Act of 1930, as amended (19 U.S.C. §1617) and is therefore *ultra vires*, illegal and void. Section 617 reads as follows:

Upon a report by a customs officer, United States attorney, or any special attorney, having charge of *any claim arising under the customs laws*, showing the facts upon which such claim is based, the probabilities of a recovery and the terms upon which the same may be compromised, the Secretary of the Treasury is authorized to compromise such claim, if such action shall be recommended by the General Counsel for the Department of the Treasury. [Emphasis added.] [5]

Thus section 617, by its terms, authorizes the relevant Government officials to compromise "any claim arising under the customs laws. * * *" There is no doubt that a claim for dumping duties is a "claim arising under the customs laws." And since the agreements at issue compromised claims for dumping duties, it is clear that the plain language of section 617 authorized the Secretary of Commerce to enter into the agreements.[6]

Notwithstanding this plain language plaintiffs argue that the

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[3] Section 751 requires the Secretary to conduct a periodic review and determination of antidumping duties.

[4] Prior to the April 28, 1980 settlement agreements, plaintiffs herein had filed a civil action in the U.S. District Court for the District of Columbia challenging the alleged protracted refusal of the Government to enforce the dumping finding of March 10, 1971. *COMPACT, et al.* v. *Blumenthal*, C.A. 79-1207 (D.D.C. 1979), *appeal pending, sub. nom., COMPACT, et al.* v. *Miller*, No. 79-1948 (D.C. Cir.). The District Court dismissed the action for lack of jurisdiction. At the time the April 28, 1980 settlement agreements were executed plaintiffs' case was pending before the U.S. Court of Appeals for the District of Columbia Circuit on the jurisdictional issue presented by the District Court's dismissal of the action. On May 9, 1980 the Court of Appeals enjoined the implementation of the settlement agreements pending appeal. After enactment on October 10, 1980 of the Customs Courts Act of 1980, the Court of Appeals, on February 5, 1981, granted plaintiffs' motion to stay proceedings pending the filing of a new complaint in this court and a determination by this court of its jurisdiction over the controversy.

Previously in the related case of *Zenith Radio Corp.* v. *United States* in this court, the court issued a preliminary injunction restraining the implementation of the April 28, 1980 settlement agreements on the ground that *Zenith* had made out a substantial case on the merits on its alternative second cause of action alleging that Government officials in negotiating and executing the agreements acted arbitrarily and in bad faith. See *Zenith Radio Corp.* v. *United States*, 1 CIT—, 505 F. Supp. 216 (1980).

[5] The Secretary of the Treasury's functions under section 617 have been transferred to the Secretary of Commerce, insofar as those functions relate to the settlement of claims for antidumping duties. Reorg. Plan No. 3 of 1979, *supra*, §5(a)(1)(G).

[6] In the related *Zenith* case, plaintiff moved for partial summary judgment on its first cause of action contending, among other things, that section 617 only authorized the settlement of *liquidated claims* for antidumping duties. This court rejected that contention holding that the word "claim" as used in section 617 is a broad comprehensive word which covers both liquidated and unliquidated claims. *Zenith Radio Corp.* v. *United States*, 1 CIT—, 509 F. Supp. 1282 (1981).

authority to compromise "claims" contained in section 617 is limited to the authority to compromise claims for fines penalties and forfeitures and that since antidumping duties are not penal in nature, they may not be compromised. More particularly, plaintiffs contend that the scope of the authority of section 617 has been obscured by various recodifications of that provision since its first enactment in 1922. According to plaintiffs, while the language of section 617 is broad, a reading of that provision in its original setting establishes that it was intended only to authorize the compromise of claims for fines, penalties and forfeitures.

Continuing, plaintiffs point out that section 617 of the Tariff Act of 1922, 42 Stat. 987, was preceded and followed by sections 616 and 618 which dealt exclusively with the remission and mitigation of fines, penalties and forfeitures. Section 616, as it appeared in the Tariff Act of 1922, prohibited an officer of the United States from compromising any claim of the United States under the customs laws for any fine, penalty or forfeiture. That section contained a proviso, however, "which specified that the Secretary of the Treasury shall have the power to remit or mitigate any such fine, penalty or forfeiture or to compromise the same *in the manner provided by law*." [Emphasis added.]

Section 617 provided authority to the Secretary to compromise claims "under the customs laws." Finally, section 618 provided authority to the Secretary to remit or mitigate a fine, penalty or forfeiture [7]

Since section 616 states that the Secretary may remit, mitigate or

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[7] Sections 616, 617 and 618 as they appeared in the Tariff Act of 1922 (42 Stat. 987) provided:

SEC. 616. COMPROMISE OF CLAIMS.—It shall not be lawful for any officer of the United States to compromise or abate any claim of the United States arising under the customs laws for any fine, penalty, or forfeiture, and any such officer who compromises or abates any such claim or attempts to make such compromise or abatement, or in any manner relieves or attempts to relieve any persons, vessel, vehicle, merchandise, or baggage from any such fine, penalty, or forfeiture shall be guilty of a felony and upon conviction thereof shall be punished by a fine of not more than $5,000 or by imprisonment for a term of not exceeding two years: *Provided*, That the Secretary of the Treasury shall have power to remit or mitigate any such fine, penalty, or forfeiture, or to compromise the same in the manner provided by law.

SEC. 617. SAME.—Upon a report by a collector, district attorney, or any special attorney or agent, having charge of any claim arising under the customs laws, showing the facts upon which such claim is based, the probabilities of a recovery and the terms upon which the same may be compromised, the Secretary of the Treasury is hereby authorized to compromise such claim, if such action shall be recommended by the Solicitor of the Treasury.

SEC. 618. REMISSION OR MITIGATION OF PENALTIES.—Whenever any person interested in any vessel, vehicle, merchandise, or baggage seized under the provisions of this Act, or who has incurred, or is alleged to have incurred, any fine or penalty thereunder, files with the Secretary of the Treasury if under the customs laws, and with the Secretary of Commerce if under the navigation laws, before the sale of such vessel, vehicle, merchandise, or baggage a petition for the remission or mitigation of such fine, penalty, or forfeiture, the Secretary of the Treasury, or the Secretary of Commerce, if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto. In order to enable him to ascertain the facts, the Secretary of the Treasury may issue a commission to any special agent, collector, member of the Board of United States General Appraisers, or United States commissioner, to take testimony upon such petition: *Provided*, That nothing in this section shall be construed to deprive any person of an award of compensation made before the filing of such petition.

In 1930, these three sections were recodified as sections 616–618 of the Tariff Act of 1930, 46 Stat. 757. In 1948, section 616 was repealed; however, the substance of that provision is contained in 18 U.S.C. § 1915, 62 Stat. 793. The final amendment to section 617 occurred in 1970, substituting a reference to a customs officer for a reference to a collector. 84 Stat. 291.

compromise claims for fines, penalties and forfeitures "in the manner provided by law," and since section 618 provided authority to remit or mitigate fines, penalties or forfeitures, plaintiffs argue that it necessarily follows that the authority to compromise "claims" contained in section 617 is limited to the compromise of those claims referred to in section 616, *i.e.*, claims for fines, penalties or forfeitures. In other words, plaintiffs' contention is that the language of section 617 is inextricably linked to the language of section 616 which is clearly limited in its scope to the remission, mitigation and compromise of fines, penalties and forfeitures.

But this contention is not supported by the language or the historical context of the sections or by their contemporaneous administrative construction.

Sections 616 and 617 were enacted into law at the same time in 1922 by the 67th Congress. In section 616, Congress utilized the phrase "claim of the United States arising under the customs laws *for any fine, penalty or forfeiture.*" [Emphasis added.] In contrast, in section 617, the same Congress utilized the phrase "any claim arising under the customs laws" and omitted the phrase "for any fine, penalty or forfeiture." If the same Congress which limited section 616 to claims for fines, penalties and forfeitures had wished to so limit section 617, it seems clear that Congress would have included the same limiting language in both sections 616 and 617. Considering that the same Congress enacted both sections and that that Congress limited section 616 by the use of a particular phrase, the failure to include that same phrase in section 617 can only mean that section 617, unlike section 616, is not limited in scope.

Moreover, plaintiffs' contention concerning the link between sections 616, 617 and 618 depends solely upon the premise that those sections possessed a common origin in the Tariff Act of 1922. However, this premise is incorrect. The fact is that sections 616 and 618 originated in sections 17, 18, 19 and 20 of the Act of June 22, 1874, 18 Stat. 189. [8] On the other hand, section 617 possessed no apparent predecessor prior to the Tariff Act of 1922.

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[8] Those sections provided:

SECTION 17. That whenever, for an alleged violation of the customs revenue laws, any person who shall be charged with having incurred any fine, penalty, forfeiture, or disability other than imprisonment, or shall be interested in any vessel or merchandise seized or subject to seizure, when the appraised value of such vessel or merchandise is not less than one thousand dollars, shall present his petition to the judge, of the district in which the alleged violation occurred, or in which the property is situated, setting forth, truly and particularly, the facts and circumstances of the case, and praying for relief, such judge shall if the case, in his judgment, requires, proceed to inquire, in a summary manner into the circumstances of the case, at such reasonable time as may be fixed by him for that purpose, of which the district attorney and the collector shall be notified by the petitioner, in order that they may attend and show cause why the petition should be refused.

SECTION 18. That the summary investigation hereby provided for may be held before the judge to whom the petition is presented, or, if he shall so direct, before any United States commissioner for such district, and the facts appearing thereon shall be stated and annexed to the petition, and, together with a certified copy of the evidence, transmitted to the Secretary of the Treasury, who shall thereupon have power to mitigate of remit such fine, penalty, or forfeiture, or remove such disability, or any part thereof,

(Continued)

This conclusion that sections 17, 18, 19 and 20 were the predecessors of sections 616 and 618 is demonstrated by a simple comparison of those sections with the terms of sections 616 and 618. Thus a comparison of section 19 of the 1874 Act with section 616 leaves no doubt that section 19 was the predecessor of section 616. Except for stylistic differences and an alteration of the penalty imposed by each section, the terms of the two sections are identical.

A similar comparison of sections 17, 18 and 20 shows that these sections were the predecessors of section 618, not section 617. Section 17 authorized a party to file a petition for the mitigation or remission of a fine, penalty or forfeiture with a district judge. Pursuant to the same section, the judge or a United States commissioner was to conduct a summary inquiry into the facts. Pursuant to section 18, the report of the judge or commissioner was to be forwarded to the Secretary of the Treasury.

At the same time, section 20 required the relevant district attorney and collector of customs to forward information in their possession concerning the petition to the Secretary.

Upon receipt of the report and the information section 18 authorized the Secretary to "mitigate or remit" the fine, penalty or forfeiture if, in the Secretary's opinion, the fine, penalty or forfeiture had been incurred "without willful negligence or intention of fraud."

It is clear from this brief review of sections 17, 18 and 20 that the sections did not refer to the authority to "compromise" claims as does section 617.

In addition, it is clear that section 18 was the most important section in that it contained the relevant grant of authority. Sections 17 and 20 merely established a procedure for the exercise of that authority.

Moreover, a comparison of section 18 and section 618 leaves no doubt but that the former is the predecessor of the latter. The operative language of the two sections is virtually identical.

In short, the only real change made in sections 17, 18 and 20 by

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(Continued)

if, in his opinion, the same shall have been incurred without willful negligence or any intention of fraud in the person or persons incurring the same, and to direct the prosecution, if any shall have been instituted for the recovery thereof, to cease and be discontinued upon such terms or conditions as he may deem reasonable and just.

SECTION 19. That it shall not be lawful for any officer or officers of the United States to compromise or abate any claim of the United States arising under the customs laws, for any fine, penalty, or forfeiture incurred by a violation thereof; and any officer or person who shall so compromise or abate any such claim, or attempt to make such compromise or abatement, or in any manner relieve or attempt to relieve from such fine, penalty, or forfeiture, shall be deemed guilty of a felony, and, on conviction thereof, shall suffer imprisonment not exceeding ten years, and be fined not exceeding ten thousand dollars: *provided, however*, that the Secretary of the Treasury shall have power to remit any fines, penalties, or forfeitures, or to compromise the same, in accordance with existing law.

SECTION 20. That whenever any application shall be made to the Secretary of the Treasury for the mitigation or remission of any fine, penalty, or forfeiture, or the refund of any duties, in case the amount involved is not less than one thousand dollars, the applicant shall notify the district attorney and the collector of customs of the district in which the duties, fine, penalty, or forfeiture accrued; and it shall be the duty of such collector and district attorney to furnish to the Secretary of the Treasury all practicable information necessary to enable him to protect the interests of the United States.

the Tariff Act of 1922 was the elimination of the procedural requirement involving a judicial inquiry into the facts. The decision which the Secretary was authorized to render was nearly identical in both statutes.

In these circumstances, it is apparent that sections 17, 18, 19 and 20 were the predecessors of sections 616 and 618 and not as plaintiffs state, section 617. Sections 17, 18, 19 and 20 were not preceded, followed or separated by a provision even similar to section 617 in the Act of June 22, 1874. Thus, the juxtaposition of sections 616, 617 and 618 in the Tariff Act of 1922 in no way indicates that section 617 was inextricably linked with sections 616 and 618.

This conclusion is further supported by the historical context of section 617. At the time section 617 was enacted into law, R.S. 3469 was in effect. That statute provided:

> SEC. 3469. Upon a report by a district attorney, or any special attorney or agent having charge of any claim in favor of the United States, showing in detail the condition of such claim, and the terms upon which the same may be compromised, and recommending that it be compromised upon the terms so offered, and upon the recommendation of the Solicitor of the Treasury, the Secretary of the Treasury is authorized to compromise such claim accordingly. But the provisions of this section shall not apply to any claim arising under the postal laws.

With respect to R.S. 3469, various Attorneys General had expressed the opinion that that provision authorized the Secretary of the Treasury to compromise claims for fines, penalties and forfeitures if the decision to compromise was based solely upon collectibility and not hardship. E.g., 16 Op. Att'y Gen. 259 (1879); 29 Op. Att'y Gen. 149, 155 (1911); 36 Op. Att'y Gen. 40 (1929).[9] Indeed, in *United States* v. *Richardson*, 9 Fed. 804 (D. Mass. 1882), the court noted, without deciding the matter, that the Secretary of the Treasury had in 1872 utilized the authority contained in R.S. 3469 to compromise claims for fines, penalties and forfeitures.

R.S. 3469 was in effect before and after the Tariff Act of 1922. In fact, R.S. 3469 became 31 U.S.C. § 194 (1976) and remained in effect until 1978 when it was repealed by the Bankruptcy Reform Act. 92 Stat. 2680.

Given the fact that R.S. 3469 was in effect prior and subsequent to the Tariff Act of 1922 and the fact that R.S. 3469 had been utilized to compromise claims for fines, penalties and forfeitures arising under the customs laws, it is evident that the phrase "in the manner provided

[9] In contrast, the Attorneys General also concluded that in cases where considerations of hardship were involved, a compromise of claims for fines, penalties and forfeitures was not permissible under R.S. 3469 but could be resolved by the Secretary's utilization of his power to "remit or mitigate." *Ibid.*

by law" which is contained in the proviso in section 616[10] need not and does not refer only to the authority to compromise claims contained in section 617. Indeed, the phrase "in the manner provided by law" contained in section 616, when it refers to the authority to compromise, does not refer solely to section 617. The phrase, as it applies to compromise authority, could and did apply equally to either R.S. 3469 or section 617 or both.

There is the futher consideration that in addition to claims for fines, penalties and forfeitures, R.S. 3469 authorized the Secretary of the Treasury to compromise claims in favor of the United States for customs duties provided that the conditions specified in that section were followed. See *United States* v. *Richardson*, *supra*.

R.S. 3469, as previously indicated, remained in effect until 1978 when it was repealed by the Bankruptcy Reform Act. As explained by the Report of the House and Senate Committees on the Judiciary, the purpose of the repealing provision was to "repeal deadwood." H.R. Rep. No. 95–595, 95th Cong., 1st Sess. 456 (1977); S. Rep. No. 95–989, 95th Cong., 2d Sess. 164 (1978). When it is considered that R.S. 3469 provided authority to the Secretary to compromise claims in favor of the United States for customs duties and that R.S. 3469 was repealed as "deadwood," it would seem inconceivable that Congress intended thereby to limit the Secretary's authority under section 617 to the authority to compromise only claims for fines, penalties and forfeitures. Rather, the repeal of R.S. 3469 as "deadwood" would seem recognition by Congress that section 617 already provided broad authority for the Secretary to compromise "any claims under the customs laws and that to that extent R.S. 3469 was therefore redundant.

Plaintiffs further rely on the Report of the Committee on Ways and Means of the House of Representatives on the bill which became the Tariff Act of 1922. That Report, which refers in general terms to the portion of the bill, Part V, in which sections 616, 617 and 618 appeared, states (H.R. Rep. No. 248, 67th Cong., 1st Sess. at 26 (1921)):

> The laws for the protection of the revenue and imposing fines, penalties and forfeitures for violation of the customs laws have been assembled in Part V. * * *

Plaintiffs contend that because this statement refers to laws imposing fines, penalties and forfeitures, it follows that section 617 applies only to claims for fines, penalties and forfeitures. This conclusion is not logical.

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[10] As previously indicated, note 7, *supra*, the proviso contained in section 616 stated:
Provided. That the Secretary of the Treasury shall have power to remit or mitigate any such fine, penalt y or forfeiture, or to compromise the same in the manner provided by law.

The phrase contained in the House Report upon which plaintiffs rely also refers to the fact that Part V of the legislation contained laws for "the protection of the revenue" as well as laws which pertained to fines, penalties and forfeitures. The Report does not explain which sections contained in Part V of the legislation related to laws for the protection of the revenue and which sections related to the laws pertaining to fines, penalties and forfeitures. Thus, the Report could be interpreted as explaining that sections 616 and 618 relate to laws pertaining to fines, penalties and forfeitures and that section 617 relates to laws providing for the protection of the revenue.

In fact, this latter interpretation of the Report seems more reasonable than plaintiffs' interpretation. This conclusion results from the fact that the statutory language utilized in section 617 refers to any claim arising under the customs laws and does not contain language, as does section 616, which limits the section to claims for fines, penalties and forfeitures. This interpretation of the Report accords with the actual language of section 617 and gives meaning to the entire quoted portion of the Report, including the phrase "laws for the protection of the revenue," whereas plaintiffs' interpretation of the Report ignores that phrase entirely.

Plaintiffs next turn to the headings of section 616 and 617 and attempt to again conclude that these headings demonstrate the fact that the authority contained in section 617 is, contrary to its terms, limited to claims for fines, penalties and forfeitures.

Of course, the headings of statutes may be utilized to interpret a statute, if at all, only where the statute is ambiguous. E.g., *Russ* v. *Wilkens*, 624 F. 2d 914, 922 (9th Cir. 1980); *Motor Coach Industries, Inc.* v. *United States*, 536 F. 2d 930, 936 (Ct. Cl. 1976); *Tibke* v. *Immigration and Naturalization Service*, 335 F. 2d 42, 45 (2d Cir. 1964). However, section 617 is not ambiguous. Thus, no resort to the section headings is necessary.

In any event, plaintiffs' conclusion is without merit. The heading of section 616 reads "Compromise of Claims." The heading of section 617 reads "Same." Since section 616 is limited to claims for fines, penalties and forfeitures, plaintiffs conclude that the term "Claims," as utilized in the heading to section 616, must be interpreted as referring only to claims for fines, penalties and forfeitures. Plaintiffs then contend that, since the heading to section 617 reads "Same,' that heading must be interpreted in the same manner as the heading to section 616, *i.e.*, as if it referred only to claims for fines, penalties or forfeitures. Finally, plaintiffs state that the term "claim," as contained in the text of section 617, must be interpreted in the same manner as the heading.

Plaintiffs' interpretation is not reasonable. The heading of section

616 reads: "Compromise of Claims." The heading of section 617 reads "Same." Both headings thus refer to the generic term "claims" which is much broader than claims for fines, penalties and forfeitures. Accordingly, the headings reasonably interpreted mean that both sections 616 and 617 apply to the compromise of all types of claims unless the actual language of the section, as in the case of section 616, contains language which limits the term.

The conclusion that section 617 is not limited to the authority to compromise claims relating to fines, penalties and forfeitures is also supported by an opinion of the Attorney General. 35 Op. Att'y Gen. 15 (1925). In 1925, shortly after the enactment of the Tariff Act of 1922, the Secretary of the Treasury requested an opinion from the Attorney General as to the authority which could be delegated to the Director of Customs. In the course of his opinion, the Attorney General twice referred to sections 617 and 618. In the first reference, the Attorney General described the authority contained in those sections as follows (*id.* at 18):

> By section 617 the Secretary is authorized to compromise, under certain conditions, *any claim* arising under the customs law, if such action shall be recommended by the Solicitor of the Treasury, and by section 618 he is authorized to *remit or mitigate fines or penalties* upon such terms and conditions as he deems reasonable and just. [Emphasis added.]

In the second reference (*id.* at 21), the Attorney General noted:

> * * * I think the provisions of sections 616, 617, and 618 of the Tariff Act of September 21, 1922, relating to the *compromise of claims and the abatement of fines, penalties and forfeitures* require the personal action of the Secretary. [Emphasis added.]

This opinion of the Attorney General clearly shows that the nearly contemporaneous interpretation of the Tariff Act of 1922 was that section 617 was not limited to "abatement" of fines, penalties and forfeitures, but contained authority to compromise "all claims." [11]

Additionally, plaintiffs refer to the general principle of statutory construction that the courts will read the text of a statute in the light of its context and will interpret the text so as to carry out the legislative intent. In particular, plaintiffs rely on *Elizabeth Arden Sales Corporation* v. *Guy Blass Co.*, 150 F. 2d 988 (8th Cir. 1945). That case involved a treble damage action under sections 2 (d) and (e) of the Clayton Act as amended by the Robinson-Patman Act.

[11] Plaintiffs also contend that the use of section 617 to compromise claims for dumping duties is inconsistent with a longstanding administrative practice. Plaintiffs state that they have not been able to uncover a single instance during the six decades since enactment of section 617 where the Secretary of the Treasury asserted authority under that section to compromise anything except fines, penalties and forfeitures. In fact, very little recorded history of the use of the authority contained in section 617 is in existence. And even if such a practice did exist—which is questionable—at most it is entitled to considerable weight, but is scarcely dispositive.

Subsections (a), (b), (c), (d) and (f) of section 2 regulated a variety of acts and practices by any person "engaged in commerce." Subsection (e) did not contain this qualification, "engaged in commerce," and the defendant contended that section 2(e) was therefore unconstitutional because it represented an unlawful exercise of authority by the federal Government over intra-state commerce. The court decided that the words "engaged in commerce" should be read into subsection (e) in order to give that provision its intended meaning. 150 F. 2d at 992–993. According to the plaintiffs here, just as the court read the qualifying phrase "engaged in commerce" into the provision in question because it appeared in related provisions, so too this court should read the phrase "fines, penalties and forfeitures" into section 617. This interpretation, plaintiffs assert, will then harmonize the meaning of section 617 with its companion provisions in sections 616 and 618.

The difficulty though is that sections 616, 617 and 618 do not form a statutory whole in the same manner as subsections (a), (b), (c), (d) and (e) of the Robinson-Patman Act. Unlike those provisions, an interpretation of section 617, in accordance with its plain meaning, would not defeat the purpose of the entire statute nor would it defeat any legislative purpose. More importantly, had the court in *Elizabeth Arden* adopted the construction of the statute urged by defendant, it would have placed the constitutionality of that statute in doubt. Thus the court construed the enactment in accordance with the basic principle that if possible a statute should be so construed as to avoid a question as to its constitutionality.

Plaintiffs next argue that the execution of the settlement agreements violated the legally protected interests of the plaintiffs to an administrative determination of antidumping duties under section 751 of the Tariff Act of 1930, as added by the Trade Agreements Act of 1979 (19 U.S.C. § 1675) and thus deprived them of a property interest without a hearing in violation of the Due Process Clause.

In order to determine whether there has been a violation of the Due Process Clause, it is first necessary to determine whether a claimant has been deprived of a "property" interest. *Board of Regents* v. *Roth*, 408 U.S. 564 (1972); *Perry* v. *Sindermann*, 408 U.S. 593 (1972). This property interest must possess a source "outside" of the Constitution. *Ibid.*

In the *Zenith* case, this court held that section 617 and section 751 are separate and distinct statutes. *Zenith Radio Corp.* v. *United States*, 509 F. Supp. at 1287–1288. That being the case, any property interest which plaintiffs acquired under section 751 was subject to an exercise of the authority contained in section 617. That is to say that even assuming a property interest was acquired under section 751 it was a

contingent one since it remained subject to an exercise of the authority under section 617. Since section 617, by its terms, does not require the Secretary to grant a hearing to plaintiffs prior to an exercise of the authority contained in that section, it follows that any property interest which plaintiffs acquired under section 751 was, by its nature subject to determination without hearing by means of exercise of the authority contained in section 617.

Finally, plaintiffs contend that the execution of the settlement agreements cannot be reconciled with the provisions of section 751 of the Tariff Act of 1930, as added by the Trade Agreements Act of 1979 (19 U.S.C. § 1675). A similar contention was rejected in *Zenith*, 509 F. Supp. at 1286–128 —and is rejected here. As the court stated in *Zenith*, *id.* at 1287, "no * * * repugnancy exists here [between sections 617 and 751] since the two provisions reflect different Congressional concerns and apply to different functions of the Secretary."

For the foregoing reasons, plaintiffs' motion for partial summary judgment on their first cause of action is denied and defendant's cross-motion on that cause of action is granted.

(Slip Op. 81–106)

NATIONAL LATEX PRODUCTS COMPANY, PLAINTIFF *v.* THE UNITED STATES, DEFENDANT

Before NEWMAN, Judge.

Court No. 81–7–00898

Memorandum and Order

[Defendant's motion for protective order granted.]

(Dated November 18, 1981)

Sharretts, Paley, Carter & Blauvelt, P.C. (*Gail T. Cumins*, Esq., of counsel) for the plaintiff.

J. Paul McGrath, Assistant Attorney General, *David M. Cohen*, Director, Commercial Litigation Branch, and *Velta A. Melnbrencis*, Esq., for the defendant.

NEWMAN, *Judge:* Defendant has moved for a protective order regarding documents numbered 8 (with attachments) and 12 contained in the administrative record filed with the Court in this action contesting the dismissal by the United States Department of Commerce of plaintiff's countervailing duty petition regarding toy balloons and playballs from Mexico.[1]

[1] No demand for any privileged documents has been made by plaintiff or any intervenor, and defendant 's motion has assertedly been made "in order to comport with the Court's procedural interpretation in "*Southwest Florida Winter Vegetable Growers Association* v. *United States*, 85 Cust. Ct. ——, C.R.D. 80–7 (1980)."

Defendant's motion is supported by an affidavit of Lionel H. Olmer, Under Secretary for International Trade, United States Department of Commerce,[2] claiming governmental privilege for documents numbered 8 and 12. These documents allegedly are intra-agency communications containing "legal and policy analyses and recommendations," the disclosure of which, in Mr. Olmer's opinion, "would seriously impede the free flow of essential advice and recommendations necessary for effective decision-making."

In opposition to defendant's motion, plaintiff maintains that the documents in question do not fall within the scope of the governmental privilege respecting intra-agency communications; and plaintiff further insists that its need for the documents in order to assert its claim outweighs any harm that would result to the Government's decision-making process if the documents were released.

The Court has determined that defendant's motion for a protective order should be granted.

The pertinent factual background follows:

On May 14, 1981 plaintiff filed a petition with Commerce under section 303 of the Tariff Act of 1930, as amended (19 U.S.C. § 1303), requesting that countervailing duties be imposed on the importation of toy balloons and playballs from Mexico. But plaintiff's petition did not allege nor furnish information respecting injury to an industry in the United States. In the Federal Register Notice of June 17, 1981 (46 FR 31698), Commerce dismissed plaintiff's petition predicated on the conclusion "that in this case an allegation of injury to the United States industry is a necessary component of the petition." Continuing, the June 17, 1981 Notice states:

> This conclusion is based on the decision by the United States Department of the Treasury in a 1978 case involving other Mexican duty-free products. In the August 28, 1978 notice of initiation of this case (43 FR 38482) Treasury stated:
>
> > The imported merchandise classifiable under item numbers 705.3000, 791.7820, and 791.7680 of the tariff schedules of the United States, annotated (TSUSA) are eligible for duty-free entry under the generalized system of preferences. In the event that it becomes necessary to refer this case to the U.S. International Trade Commission pursuant to section 303(a)(2), Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(2)), there is evidence on record concerning injury, or likelihood of injury, to an industry in the United States with regard to these duty-free imports.

[2] Plaintiff has expressly declined to contest Mr. Olmer's authority to assert a claim of privilege on behalf of the Department of Commerce,and accordingly any issue as to thether the affidavit was submitted by the head of the agency is pretermitted. It has been noted, however, that in *Roses, Inc.* v. *United States*, 1 CIT—, Slip OP. 81–4 (1981), the requisite affidavit by the head of the agency having control of countervailing duty determinations was executed by Philip N. Klutznick, then Secretary of the Department of Commerce.

> In the absence of any subsequent action prior to this petition rendering the 1978 decision inapplicable to cases involving duty-free imports from Mexico, we have determined in this case that countervailing duties may not be imposed unless there is an affirmative determination concerning injury. Because of the absence of any allegation of injury, the petition, which is satisfactory otherwise, does not allege the elements necessary for the imposition of countervailing duties. We are dismissing the petition and terminating the proceeding without prejudice to the right of the petitioner to submit a revised petition that includes the necessary allegation and supporting information on injury.

It is plaintiff's position in this action that since Mexico is not a signatory of the General Agreements on Tariffs and Trade (GATT), and since the United States and Mexico have not entered into an agreement requiring that an injury determination be made for the United States to impose countervailing duties on duty-free Mexican imports, no allegation of injury was required in plaintiff's countervailing duty petition.[3] The Government's answer to the complaint concedes that Mexico is not a signatory to the GATT and that no commercial agreement exists between Mexico and the United States requiring an injury determination in this matter.

The two documents in question have been reviewed by the Court *in camera* and are found to be properly represented in defendant's moving papers and in Under Secretary Olmer's affidavit. It is well established that a qualified privilege of nondisclosure attaches to intra-agency documents reflecting advisory opinions, recommendations, and deliberations comprising part of the process by which Governmental decisions are formulated. See *EPA* v. *Mink*, 410 U.S. 73 (1973); *Roses, Inc.* v. *United States, et al.*, 1 CIT—, Slip Op. 81–4 (1981); *SCM Corp.* v. *United States* (*Brother International Corporation, Party-in-Interest*), 82 Cust. Ct. 351, C.R.D. 79–11, 473 F. Supp. 791 (1979); *Sprague Electric Company* v. *United States* (*Capar Components Corp., Party-in-Interest*), 81 Cust. Ct. 168, C.R.D. 78–18, 462 F. Supp. 966 (1978). Thus, in *Sprague* this Court commented (81 Cust. Ct., at 177):

> The ruling on defendant's motion respecting documents "a" through "g" would be apparent on the basis of what has been discussed thus far, but for one significant circumstance. The doctrine of executive privilege is not absolute, but is qualified. *Smith* v. *F.T.C.*, 403 F. Supp. at 1015; *Black* v. *Sheraton Corp. of America*, 371 F. Supp. at 100; *Kaiser Aluminum & Chemical Corp.* v. *United States*, 157 F. Supp. at 946. As stressed by the Court in *Black* (at 100):

[3] This issue is not before the Court at this juncture, and the present issue relates solely to disclosure.

> * * * Recognition of the claim [of executive privilege] requires a *delicate balancing of competing interests*, the public's interest in preserving confidentiality to promote open communication necessary for an orderly functioning of the government, and the individual's need for disclosure of particular information. *The question at the core of any claim of executive privilege is whether the damage resulting from disclosure outweighs the need for a just resolution of a legal dispute.* [Italics supplied.]

Again, in *Smith* v. *F.T.C.*, the court enunciated the concept of "balancing" as follows (403 F. Supp. at 1015):

> * * * While the exact showing necessary to surmount a governmental claim of privilege is unclear [footnote omitted], what is basically involved in each case is an *ad hoc* balancing of individual need for the materials against the harm resulting from any such disclosure. * * *

See also: *Nixon, supra; Sun Oil Co., supra; Union Oil Co., supra; Committee for Nuclear Responsibility, supra.*

We now consider the fundamental question of whether plaintiff has demonstrated a need for the disputed documents which outweighs the harm that disclosure may do to intra-governmental candor. A "delicate balancing of competing interests," of course, cannot be accomplished so as to achieve a result having the invariance of a precise mathematical equation.

Respecting plaintiff's need for the materials sought, plaintiff argues that it cannot prepare its case without knowing the reasons for dismissal of its petition, and that "the withheld documents will presumably shed additional light on the 'other bases' for dismissal".

To date, plaintiff has received copies of 30 of the 32 documents included in the certified index of the administrative record which formed the basis of the Government's decision. Relative to the two additional documents in question, the Court's *in camera* inspection reveals that these documents contain no reasons or explanation as to why plaintiff's petition should have been or was dismissed. While this Court is completely sympathetic with plaintiff's "predicament" due to defendant's failure to give explicit reasons for the asserted injury requirement, nevertheless the disclosure of documents 8 and 12 would not aid plaintiff in knowing why its petition was dismissed. Plaintiff has not advanced any other need for the two documents.

For the foregoing reasons, it is ordered that documents numbered 8 (with attachments) and 12 contained in the administrative record previously forward to the Clerk of the Court in connection with plaintiff's countervailing duty petition regarding toy balloons and playballs from Mexico are hereby recognized as privileged documents.

Accordingly, defendant's motion for a protective order is granted.

(Slip Op. 81–107)

JAMES J. BOYLE & CO. A/C NITTO KOHKI U.S.A. INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 77–9–03236

Decision

BURDEN OF PROOF

An Export Value determined upon appraisal is presumed correct until it is disproven, and the alternatively proposed Export Value is proven by a preponderance of the evidence. 28 U.S.C. § 2635.

VALUATION—UNITED STATES VALUE

Merchandise cannot be appraised at a claimed United States Value, in the absence of proof that an Export Value did not exist. 19 U.S.C. § 1401(a)(2).

[Judgment for Defendant.]

(Dated November 18, 1981)

Glad, Tuttle & White, (*Edward N. Glad* at the trial and on the brief), for the plaintiff.

Thomas S. Martin, Acting Assistant Attorney General; *Joseph Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Susan Cassell* at the trial; *John J. Mahon* on the brief), for the defendant.

WATSON, *Judge:* This action raises the question of what is the proper basis for determining the value for tariff purposes, of certain pneumatic hand-tools. Plaintiff, (Nitto Kohki, U.S.A.), a wholly-owned subsidiary of the tools' manufacturer (Nitto Kohki, Japan), was the sole importer of these items in 1972. Plaintiff contends that Customs erroneously computed the Export Value [1] of the goods in question; using the retail price minus a wholesaler's discount, instead of list prices on invoices supplied by plaintiff's parent company.

The essence of plaintiff's argument in support of calculating Export Value on the basis of the invoice prices, is that it is a selected purchaser at wholesale, who negotiated the invoice prices at arms-length in a bona fide transaction. This directly contradicts the finding upon appraisal that plaintiff was a selling agent for the parent company, Nitto Kohki, Japan.

There was no contractual agreement between Nitto Kohki, Japan, and the plaintiff, designating it as an "exclusive" or selected purchaser of the merchandise in question. This fact alone militates against an

[1] 19 U.S.C. 1401(b) defines Export Value of imported merchandise as:

> * * * the price, at the time of exportation to the United States of the merchandise undergoing appraisement, at which such or similar merchandise is freely sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature and all other expenses incidental to placing the merchandise in condition, packed ready for shipment to the United States.

argument that there was such a relationship. *Majestic Electronics, Inc.*, v. *United States*, 84 Cust. Ct. 38, 48, C.D. 4839, 488 F. Supp. 897 (1980). Despite the lack of an agreement, plaintiff points to the absence of any restrictions placed on it by the parent company, in terms of who it could sell to and how it could conduct sales operations in the United States. These facts, viewed in the context of the record as a whole, do not preclude a determination that plaintiff was a sales agent for Nitto Kohki, Japan. It is undisputed that plaintiff imported only pneumatic hand-tools manufactured by Nitto Kohki, Japan. The record further indicates that plaintiff held itself out as a manufacturer of pneumatic hand-tools on its sales circulars. Plaintiff had no manufacturing capabilities in the United States during 1972. Its operations only entailed the warehousing, distribution and sale of tools manufactured by Nitto Kohki, Japan. Thus, the conclusion that plaintiff perceived, and in fact cultivated an impression of itself as an extension of Nitto Kohki, Japan, is amply supported by the record.

More importantly, of the six named directors and executive officers of Nitto Kohki, U.S.A., five held similar or identical positions in the parent corporation during 1972. Only one resided in the United States during 1972.

Therefore, plaintiff's corporate structure and the manner in which it conducted business during the period in question, support the determination that plaintiff was an agent of Nitto Kohki, Japan. *Robert E. Landweer & Co., Inc., a/c Robert Newton & Sons, Inc., et al.* v. *United States*, 63 Cust. Ct. 682, 689, A.R.D. 261 (1969).

Plaintiff's argument that listed invoice prices should be used to determine the export price, because they resulted from arms-length negotiations with Nitto Kohki, Japan is not borne out by the record. The evidence advanced as proof of negotiations consists of two price estimates and a telex [plaintiff's Exhibits 5–7]. Price estimate #P–425 dated January 28, 1972 provides higher prices for all of the merchandise in question, than estimate #P–466 dated February 25, 1972. A telex sent after both price estimates had been received by the plaintiff, reinstates the higher prices listed on price estimate #P–425 as the prices to be paid for the merchandise. However, the record is devoid of evidence that the plaintiff objected in any manner to the higher prices which were reinstated as the "formal quotation" for the tools.

The passive acceptance of the reinstatement of a higher price, *after* a cheaper price has been quoted, together with the absence of any clear indication at any time of what the plaintiff considered to be a fair price for the merchandise in question, flies in the face of any normal concept of negotiation. In light of this, the offer of proof

that a different pneumatic tool was offered at the same price to plaintiff and another importer, is to be given little weight.

It must also be considered that the officer negotiating prices on behalf of Nitto Kohki, Japan served simultaneously as a director on plaintiff's board. Mr. Shimokogawa, who represented plaintiff in these negotiations, was at the same time an officer of Nitto Kohki, Japan. This "* * * is inconsistent with the degree of independence which must exist between two companies whose conduct in price negotiations is to serve as the sole justification for concluding the price agreed upon fairly reflects the market value of the merchandise." *D.H. Baldwin Co. et al.* v. *United States*, 78 Cust. Ct. 164, 166–7, C.D. 4704, 432 F. Supp. 1351 (1977).

Thus, plaintiff has not proved by a preponderance of the evidence that it was a selected purchaser who negotiated at arms-length the invoice prices supplied by Nitto Kohki, Japan.

Plaintiff's alternative argument that "United States" Value is the proper basis for determining the value of the merchandise for tariff purposes, is deficient in one important respect.

Plaintiff does not address the issue of whether an Export Value as defined by 19 U.S.C. § 1401(c)[2] exists or not. It is well settled that in order to prove the United States' Value, the existence of an Export Value for such or similar merchandise must be negated. *Glenside Steel Company et al.* v. *United States*, 71 Cust. Ct. 23, 32, C.D. 4466, 364 F. Supp. 1398 (1973), *aff'd* 62 CCPA 1, C.A.D. 1133, 503 F. 2d 563 (1974).

Plaintiff contends that the normal course of dealing in the trade of importing pneumatic hand-tools, was for a selected purchaser's relationship to exist between Japanese manufacturers and American importers. The implication being that an Export Value could not be determined, because these relationships prevented plaintiff from ascertaining the prices at which the merchandise was offered for sale in Japan.

However, the testimony of plaintiff's own witnesses argues against such a conclusion. Mr. Oka who during the period in question was directing marketing and sales in the North Central States for plaintiff, testified that one American company imported from three Japanese manufacturers at the same time. Mr. Tomishima, at the time, an Assistant Export Manager for the plaintiff, gave contradictory

[2] 19 U.S.C. 1401(c) in pertinent part provides:

United States Value

(c) For the purposes of this section, the United States value of imported merchandise shall be the price, at the time of exportation to the United States of the merchandise undergoing appraisement, at which such or similar merchandise is freely sold or, in the absence of sales, offered for sale in the principal market of the United States for domestic consumption, packed ready for delivery, in the usual wholesale quantities and in the ordinary course of trade, with allowances made for—

* * * * * * *

testimony as to whether Japanese manufacturers of pneumatic tools dealt only with selected purchasers.

The weight of the testimony then, does not support an inference that the Export Value of the merchandise could not be determined, because of selected purchaser relationships between Japanese manufacturers and American importers. It follows that the presumption of correctness, which attaches to the finding that the merchandise had an Export Value must stand. 28 U.S.C. § 2635(a).[4]

For reasons discussed above, the appraised values are affirmed.

Judgement to enter accordingly.

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[4] 28 U.S.C. § 2635 states the rule that:

Burden of proof; evidence of value

In any matter in the [Court of International Trade]:
(a) The decision of the Secretary of the Treasury, or his delegate, is presumed to be correct. The burden to prove otherwise shall rest upon the party challenging a decision.

* * * * * * *

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *November 23, 1981.*

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to Customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P81/185	Watson, J. November 19, 1981	International Harvester Co.	79-8-01244	Item 664.05 5%	Items 664.05/807.00 5%, with duty-free allowance to American-made components: ordered entries be re-liquidated at appraised values less value of certain American-made components as shown on entry papers	Judgment on the pleadings	San Francisco Payloaders (models 510 and 515) consisting in part of American-made components

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/407	Watson, J. November 16, 1981	Kayten Trading Corp. et al.	R63/10738, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Table cutlery and stainless steel flatware
R81/408	Watson, J. November 16, 1981	Kayten Trading Corp.	R65/7003, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New Bedford (Boston) Table cutlery and stainless steel flatware

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/409	Watson, J. November 16, 1981	National Silver Co. et al.	R65/22647, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Table cutlery and stainless steel flatware
R81/410	Watson, J. November 16, 1981	National Silver Co.	R68/2085, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New Bedford (Boston) Table cutlery and stainless steel flatware
R81/411	Watson, J. November 16, 1981	National Silver Co.	R68/13735, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New Bedford (Boston) Stainless steel flatwarek
R81/412	Watson, J. November 16, 1981	National Silver Co.	R68/13737, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New Bedford (Boston) Stainless steel flatware
R81/413	Watson, J. November 17, 1981	American Thermo-Ware Co.	295995-A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Binoculars

R81/414	Watson, J. November 17, 1981	Astra Trading Corp.	271028–A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Bin oculars
R81/415	Watson, J. November 17, 1981	Astra Trading Corp.	277320–A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Binoculars
R81/416	Watson, J. November 17, 1981	Astra Trading Corp.	282596–A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Binoculars
R81/417	Watson, J. November 17, 1981	Imported Rug Associates, Ltd.	R62/12203, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs
R81/418	Watson, J. November 17, 1981	Imported Rug Associates, Ltd.	R62/14474, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/419	Watson, J. November 17, 1981	Imported Rug Associates, Ltd.	R63/5140, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs
R81/420	Watson, J. November 17, 1981	Imported Rug Associates, Ltd.	R64/2643, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs
R81/421	Watson, J. November 17, 1981	Imported Rug Associates, Ltd.	R64/20884, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs
R81/422	Watson, J. November 17, 1981	Imported Rug Associates, Ltd.	R65/14104, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs
R81/423	Watson, J. November 17, 1981	Imported Rug Associates, Ltd.	R67/9016, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs

R81/424	Watson, J. November 19, 1981	Mitsui & Co. (USA), Inc.	79-8-01245	American selling price	$0.645 per lb., net, packed	Judgment on the pleadings	New Orleans Chemical product (Kane Ace B-22)
R81/425	Watson, J. November 19, 1981	Mitsui & Co. (USA), Inc.	79-8-01246	American selling price	$0.645 per lb., net, packed	Judgment on the pleadings	New Orleans Chemical product (Kane Ace B-18A-1, covered by entry 237079)
R81/426	Watson, J. November 19, 1981	Henry A. Wess, Inc.	R59/4413, etc.	Export value	Appraised unit values less 7.5%, net packed	Agreed statement of facts	Cincinnati Prism binoculars
R81/427	Re, C.J. November 20, 1981	Broadway Hale Stores, Inc.	74-4-01008, etc.	Export value	Appraised values specified on entry papers by liquidating officer, less any additions included which reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Los Angeles Miscellaneous articles
R81/428	Re, C.J. November 20, 1981	International Fashions	75-10-02635, etc.	Export value	Appraised values specified on entry papers by liquidating officer, less any additions included which reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Los Angeles Miscellaneous articles
R81/429	Re, C.J. November 20, 1981	K.W. International, Inc.	74-12-03439	Export value	Appraised values specified on entry papers by liquidating officer, less any additions included which reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Los Angeles Miscellaneous articles

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/430	Re, C. J. November 20, 1981	Nichimen Co., Inc.	75-11-02889, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Los Angeles Miscellaneous articles
R81/431	Re, C. J. November 20, 1981	Nichimen Co., Inc.	75-12-03132, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Los Angeles Miscellaneous articles
R81/432	Watson, J. November 20, 1981	Mitsubishi International Corporation	74-6-01570, etc.	American selling price	Appraised values less 23%, per pair	Agreed statement of facts	San Francisco Footwear
R81/433	Watson, J. November 20, 1981	Mitsubishi International Corporation	74-7-01866, etc.	American selling price	Appraised values less 23%, per pair	Agreed statement of facts	Charleston Footwear
R81/434	Watson, J. November 20, 1981	Mitsubishi International Corporation	76-11-02528, etc.	American selling price	Appraised values less 23%, per pair	Agreed statement of facts	Los Angeles Footwear
R81/435	Watson, J. November 20, 1981	Mitsubishi International Corporation	77-8-02382, etc.	American selling price	Appraised values less 23%, per pair	Agreed statement of facts	Baltimore Footwear

R81/436	Watson, J. November 20, 1981	Mitsubishi International Corporation	77-9-02623, etc.	American selling price	Appraised values less 23%, per pair	Agreed statement of facts	Charleston Footwear
R81/437	Watson, J. November 20, 1981	Mitsubishi International Corporation	79-9-01410, etc.	American selling price	Appraised values less 23%, per pair	Agreed statement of facts	Boston Footwear
R81/438	Watson, J. November 20, 1981	National Silver Co. et al.	R59/15363, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	San Francisco Table cutlery and stainless steel flatware
R81/439	Watson, J. November 20, 1981	National Silver Co.	R61/3881, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New Bedford (Boston) Stainless steel flatware
R81/440	Watson, J. November 20, 1981	National Silver Co.	R68/14420, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New Bedford (Boston)1 Stainless steel flatware

Appeals to U.S. Court of Customs and Patent Appeals

Appeal 81–33.—ASSOCIATED DRY GOODS CORP. *v.* THE UNITED STATES, ET AL.—Quota on Wool Sweaters—Shetland Wool Full Fashioned Ladies Sweaters—TSUS—Cross-appeal from Decision and Judgment in Slip Op. 81–70, Appeal 81–30 Was Filed by the Government.

This case arises under an Agreement Relating to Trade in Cotton, Wool and Man-made Fiber Textiles and Textile Products entered into between the United States and the People's Republic of China on September 17, 1980. Although the Agreement specified quantitative limits for some categories of textile products, the category in which this merchandise falls (category 445/446) is unlimited.

The merchandise was exported from the People's Republic of China on January 18, 1981 and on January 24, 1981. When it arrived in the United States, it was excluded from entry and stored in a bonded warehouse by the customs officials, pursuant to a quota for the merchandise established by the Committee for Implementation of Textile Agreements. The Committee was created by Executive Order 11651 of March 3, 1972 to supervise and implement all trade agreements. Accordingly, the Committee established an import quota level of 183,706 dozen sweaters.

Plaintiff-appellant alleges and defendant-appellees admit that this quota was filled on February 9, 1981. Imports from the People's Republic of China of category 445/446 sweaters had been refused entry into the United States since that date. Plaintiff-appellant attempted to enter the merchandise subsequent to February 9, 1981, the date on which the quota was filled.

In Paragraph 8 of the Agreement, the United States reserved the right to request consultations with the People's Republic of China if it believed that imports in any category or categories, not covered by specific limits, due to market disruption, threatened to impede the orderly development of trade between the two countries.

Plaintiff-appellant claims that the merchandise was wrongfully denied entry because the Committee for the Implementation of Textile Agreements miscalculated the quota level at 183,706 dozen sweaters, and also because the Committee erred in concluding that

its importations of category 445/446 merchandise from the People's Republic of China were causing market disruption, or threat of disruption.

Defendant-appellees moved to dismiss the case contending that the United States Court of International Trade lacks jurisdiction over this controversy, because it involves foreign policy considerations and the conduct of foreign affairs. Defendant-appellees also contend that plaintiff-appellant has not stated a claim as to which relief may be granted.

The United States Court of International Trade disagrees with both of defendant-appellees' contensions. The Court decided that it has plenary jurisdiction to review the entire matter pursuant to 28 U.S.C. 1581(i) (3) and (4), and ordered that within 90 days from the date of its decision, the Committee for the Implementation of Textile Agreements shall issue a new determination after re-evaluation of the data upon which it based its findings of threat to market disruption; that plaintiff-appellant's merchandise be released by the customs service from the bonded warehouse, with the exception of the merchandise which is the subject of protest 1001–1–003596; and that defendant-appellees' motion is denied.

Plaintiff-appellant, being dissatisfied with the decision and judgment of the United States Court of International Trade, and in particular with the dismissal of protest 1001–1–003596, respectfully prays the United States Court of Customs and Patent Appeals pursuant to sections 1541(a) and 2601 (a) and (b), Title 28 U.S. Code, to review the questions involved therein and to grant such relief in the premises as to the Court shall seem just.

Appeal 81–34.—Braniff Airways, Inc. *v.* The United States—Warranty Obligations—Purchasing Agreement—Cost of Services, Warranty, Taxes, Liabilities and Indemnities—Agency Commissions, Appraised Value—Constructed Value—TSUS. Appeal From Decision and Judgment in Slip Op. 81–64.

The merchandise in this case consists of 13 BAC One-Eleven Jet Passenger Aircraft manufactured by British Air Corporation and imported into the United States, at the port of Newark, New Jersey, between March 1965 and January 1966. It was agreed in the purchasing agreement entered into between BAC and plaintiff-appellant that 10% of the total purchase price for each aircraft represented the cost of "services," "warranties," "taxes," "liabilities," and "indemnities" furnished by the seller to the buyer, as well as commissions payable by BAC concerning the sale of the aircraft to plaintiff-appellant.

Plaintiff-appellant claims that included in the appraised value made by the Customs Service of each aircraft is the sum of $57,115.00 attributable to the cost of warranties relating to the correction and rectification of defects in the aircraft by BAC, in accordance with specific provisions in the purchasing agreement. Plaintiff-appellant further claims that the warranty in essence guarantees repair to the aircraft after importation into the United States, and is not a "general expense," or a "general expense and profit" in connection with the manufacture of the aircraft.

Profit, as stated in The United States *v.* Alfred Dunhill of London, Inc., 32 CCPA 187 C.A.D. 305 (1945) "is calculated on the difference between expenses and receipts."

Both plaintiff-appellant and defendant-appellee agree that the appraisement was properly made on the basis of constructed value, pursuant to section 402(d) of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956, 19 U.S.C. 1401a(d). The statute specifically mandates that the component which is a part of the constructed value includes "general expenses and profit," which have been incurred in the sale of the merchandise for shipment to the United States.

It is not in dispute that the sum of $57,115.00 is the amount attributable to the cost of the warranties included in the appraised valuation of the aircraft by the Customs Service. The sole question in dispute, therefore, is whether the sum has properly been included in the appraised constructed value.

Based upon the testimony taken at the trial and the evidence presented, the United States Court of International Trade decided that plaintiff-appellant has neither provided the Customs Service nor the Court with any evidence relating to expenses which may have been made by BAC pursuant to its contractural obligations to correct and rectify defects in the manufacture of the aircraft. Accordingly, in the absence of such proof, the Court deems the $57,115.00 to constitute "profit" and, therefore, is a part of the constructed value of the aircraft.

Pursuant to 28 U.S.C. section 2601, plaintiff-appellant appeals from the decision and judgment of the United States Court of International Trade.

Judgment of the U.S. Court of International Trade in Appealed Case

November 12, 1981

Appeal 80-39.—RANK PRECISION INDUSTRIES, INC. *v.* UNITED STATES.—Television Camera Lens System—Mounted Lens—Optical Appliances and Instruments—Parts of Television Cameras—TSUS.—C.D. 4866 reversed August 27, 1981 (C.A.D. 1269).

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, DECEMBER 2, 1981

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

WILLIAM VON RAAB,
Commissioner of Customs.

In the Matter of
CERTAIN METHODS FOR EXTRUDING PLASTIC TUBING } Investigation No. 337–TA–110

Order No. 1

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: November 18, 1981.

DONALD K. DUVALL,
Chief Administrative Law Judge.

In the Matter of
CHLOROFLUOROHYDROCARBON DRYCLEANING PROCESS, MACHINES AND COMPONENTS THEREFOR } Investigation No. 337–TA–84

Notice of Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has granted a joint motion (Motion 84–28) to terminate the above-captioned investigation on the basis of a settlement agreement.

SUMMARY: On November 24, 1981, the Commission granted Motion 84–28 to terminate the investigation on the basis of a settlement agreement entered into between the complainant and all respondents.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 523–0350.

SUPPLEMENTARY INFORMATION: On July 1, 1981, the complainant, all respondents, and the Commission investigative attorney filed a joint motion (Motion 84–28) to terminate the above-captioned investigation, pursuant to rule 210.51(a) of the Commission's Rules of Practice and Procedure (46 F.R. 17530, Mar. 18, 1981), on the basis of a setttlement agreement executed by all the parties. On July 28, 1981, the presiding officer recommended that the motion be granted. The settlement agreement appears to resolve all outstanding issues between the parties.

The Commission published notice of the joint motion and a request for public comments in the Federal Register of September 2, 1981 (46 F.R. 44104). In response to the notice, comments were received from two Government agencies, the complainant Research Development Co., and one of the respondents, A.M.A. Universal S.p.A. The comments raised no substantive objections to the settlement agreement or to the joint motion.

The Commission's Action and Order and all other nonconfidential documents on the record in this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) at the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436.

By order of the Commission.

Issued: November 24, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN AIRLESS PAINT SPRAY PUMPS AND COMPONENTS THEREOF
} Investigation No. 337–TA–90

Notice of Issuance of Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Issuance of exclusion order.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in connection with the importation or sale of certain airless paint spray pumps and components thereof, and published notice of its investigation in the Federal Register of November 21, 1980 (45 F.R. 77190).

On November 4, 1981, the Commission unanimously determined [1] that there is a violation of section 337 in the unauthorized importation and sale of certain airless paint spray pumps which infringe certain claims of U.S. Letters Patent 3,254,845, U.S. Letters Patent 3,367,270, and U.S. Reissue Patent 29,055. The Commission further determined [2] that the appropriate remedy is an order directing that the infringing articles manufactured by Larius DiCastagna and C., S.N.C., Ltd., of Lecco, Italy, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, be excluded from entry into the United States for the remaining terms of the patents, except under license granted by the patent owner.

Copies of the Commission's Action and Order, the opinions of the Commissioners, and all other nonconfidential documents on the record of this investigation are available for inspection by the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 161, Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Scott Daniels, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0480.

By order of the Commission.

Issued: November 24, 1981.[3]

KENNETH R. MASON,
Secretary.

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[1] Commissioner Eckes not participating.

[2] Commissioners Calhoun and Frank dissenting.

[3] The Commission action and order referred to herein was originally scheduled to be issued on November 23, 1981, but was not because the Commission lacked authority to do so in the absence of approiatpred funds.

In the Matter of CERTAIN HEADBOXES AND PAPERMAKING MACHINE FORMING SECTIONS FOR THE CONTINUOUS PRODUCTION OF PAPER, AND COMPONENTS THEREOF	Investigation No. 337–TA–82A

Notice of Issuance of Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Issuance of exclusion order.

SUMMARY: On November 18, 1981, the Commission issued its Action and Order in the above-captioned investigation. The Commission ordered that multi-ply headboxes and papermaking machine forming sections for the continuous production of paper, and components thereof and spare parts therefor, manufactured by Aktiebolaget Karlstads Mekaniska Werkstad (KMW) of Karlstad, Sweden, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, which infringe and contribute to or induce the infringement of claims 1, 12, 15, 16, or 22 of U.S. Letters Patent RE 28,269 and claims 4, 5, or 6 of U.S. Letters Patent 3,923,593 be excluded from entry into the United States for the remaining terms of the patents, except under license.

SUPPLEMENTARY INFORMATION: The Commission institute this investigation on July 1, 1981 (46 F.R. 34437) to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. §1337) in connection with the importation into the United States and the sale therein of certain headboxes and papermaking machine forming sections for the continuous production of paper, and components thereof. On October 19, 1981, the Commission determined (Commissioner Stern dissenting and Commissioner Frank not participating) that there is a violation of section 337 in the unauthorized importation and sale of multi-ply headboxes and papermaking machine forming sections for the continuous production of paper, and components thereof, which are produced in accordance with claims 1, 12, 15, 16, or 22 of U.S. Letters Patent RE 28,269 and claims 4, 5, or 6 of U.S. Letters Patent 3,923,593. The Commission also determined (Commissioner Stern not voting and Commissioner Frank not participating) that the appropriate remedy is to exclude infringing articles manufactured by KMW from entry into the United States for the remaining terms of the aforesaid patents, except under

license by the patent owner, and that public-interest considerations do not preclude relief in this case. The Commission also determined that the articles ordered to be excluded shall be permitted to enter under a bond of 100 percent of the c.i.f. port of entry value of the the merchandise until the Commission's determination becomes final or is disapproved by the President.

Copies of the Commission's Action and Order and any other public documents on the record of this investigation are available for inspection by the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202–523–0350.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0350.

By order of the Commission.

Issued: November 18, 1981.

Kenneth R. Mason,
Secretary.

Index

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